



General Assembly

Distr.: General

23 July 2018

Original: English

Seventy-third session

Item 74 (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**Situation of human rights defenders****Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, in accordance with Assembly resolutions 66/164 and 68/181 and Human Rights Council resolutions 16/5 and 25/18.

* A/73/150.



Report of the Special Rapporteur on the situation of human rights defenders

Summary

The Declaration on Human Rights Defenders, which marks its twentieth anniversary in 2018, recognizes the central role of individuals and groups in society in the realization of human rights. In order to assess the implementation of the Declaration, a global survey covering 140 States has been conducted. The survey reveals three key trends and issues: the evolution of the use of the term “human rights defenders”, the development of mechanisms and practices to support them and the relevance of legal and administrative frameworks for their protection. The survey also highlights the role played by various stakeholders vis-à-vis human rights defenders, in particular, regional organizations, businesses and the United Nations system. The report concludes with a reflection on the future of the Declaration and of the situation of human rights defenders.

I. Introduction

1. On 9 December 1998, almost 20 years ago, on the eve of the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights (General Assembly resolution 217 (III) (A)), the General Assembly declared that everyone had the right to promote and to strive for the protection and realization of human rights and fundamental freedoms. In doing so, the States Members of the United Nations recognized both the truth, well-known to the drafters of the Declaration, that human rights existed, above all, in "small places close to home"¹ and the desperate, daily reality of too many people who continued to face the disregard and contempt for human rights that the Assembly sought to banish.

2. The mood was not celebratory, either for the milestone anniversary of the adoption of the Universal Declaration of Human Rights or for the adoption of the new Declaration on Human Rights Defenders (General Assembly resolution 53/144, annex). Rather, historical accounts tell us that the day was cold and spirits were downcast. A group of human rights defenders gathering to mark the adoption of the Declaration on Human Rights Defenders in Paris expressed their disappointment; in the face of widespread human rights violations, the aspirations of the Universal Declaration of Human Rights continued to be unmet. While the new Declaration was viewed by many as only the "absolute minimum" necessary for the defence of human rights, it was nevertheless greeted by a group of 26 States as being in need of immediate qualification and limitation (see A/53/679, annex).

3. Notwithstanding such low spirits at the time of its adoption, the Declaration on Human Rights Defenders, adopted by consensus 20 years ago, has become a milestone document in the human rights project. It recognizes the central role of individuals and groups within society in the realization of the aspirations of the Universal Declaration of Human Rights and the rights enshrined therein. Human rights defenders and civil society more generally are a fundamental pillar of the international human rights system. The Declaration reaffirms a core set of rights required by human rights defenders to hold States to account in respect of their human rights obligations, including the right to defend and promote human rights.

4. However, beyond recognizing the importance of human rights defenders — individuals or groups who act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms through peaceful means — within the international human rights system, the Declaration represents a paradigm shift in the understanding of the human rights project: from a task accomplished mainly through the international community and States to one that belongs to every person and group within society. The Declaration recognizes that the equal justice, equal opportunity and equal dignity without discrimination long sought and deserved by every person can be realized only by empowering individuals and groups to advocate, agitate and take action for human rights. State action, while necessary and required, is insufficient to fully realize the human rights enshrined in the Universal Declaration of Human Rights.

5. In the 20 years since the adoption of the Declaration on Human Rights Defenders, the challenges facing those who defend human rights have not diminished, nor has the irrefutable logic that lies behind the Declaration changed. Although the institutional resources for the promotion and protection of defenders within the United Nations, regional organizations and national systems have grown in the past two decades, they remain insufficient to address the ongoing human rights violations around the globe. The Declaration recognizes that the implementation of the human

¹ Eleanor Roosevelt, "The Great Question", remarks delivered at the United Nations in New York on 27 March 1958.

rights recognized in the Universal Declaration of Human Rights rests primarily upon the involvement and commitment of the people of the world to the cause of human rights. Human rights defenders do not heroically stand in front of or apart from the rest of us; they are each of us and among us, they are ourselves, our parents, our siblings, our neighbours, our friends and colleagues, and our children.

6. The past 20 years have been an era of struggle for human rights. Victories have been hard fought and challenges have proliferated. The celebration of this milestone must be tempered by a recognition of the sacrifices of human rights defenders, their families and their communities. According to United Nations verified data, at least 1,019 human rights defenders, including 127 women, were killed in 61 countries across the world from 2015 to 2017 (E/2018/64, para. 131). While these figures underestimate the magnitude of the violence faced by human rights defenders globally, it is alarming to see that one person was killed every day while standing up for the rights of others during that period. Since the adoption of the Declaration, at least 3,500 human rights defenders have been killed for their role in the struggle for human rights.² Countless other human rights defenders have suffered all forms of indignities and abuses. Even human rights defenders who escape human rights violations often face indifference, isolation and inaction from their communities and their Governments.

7. The present report comes at an important moment in the history of the mandate of the Special Rapporteur and of the Declaration; the Special Rapporteur has seized upon this moment to reflect upon the significance of the Declaration on Human Rights Defenders and the accomplishments of all stakeholders, including States and human rights defenders themselves, over the past 20 years (sect. II). Section III of the report presents an overview of the 2018 global survey of the situation of human rights defenders in more than 140 countries and territories and section IV contains a reflection on the evolving role of the mandate of the Special Rapporteur in relation to the situation of human rights defenders. The methodology of the global survey and the activities of the Special Rapporteur are also elaborated upon in these sections. Section V sets out the developments noted in the global survey, drawing attention to the importance of new actors in the protection of human rights defenders, including regional organizations, businesses and the United Nations system itself. The report concludes with a discussion of the future, not just of the Declaration, but also of the global human rights project (sect. VI).

8. Two important documents are linked to this report: a statement of vision for the Declaration and the human rights defender movement over the coming years³ (an overview of which is provided in sect. VI) and a global survey of the situation of human rights defenders country by country⁴ (key findings of which are outlined in sect. III).

² This figure is an estimate based on reported killings and likely underestimates the number of human rights defenders killed, especially rural human rights defenders. The data are compiled by an international network of civil society organizations collaborating in the HRD Memorial Project (see www.hrdmemorial.org).

³ Supplementary information 1: "A vision for the next 20 years", available at www.ohchr.org/Documents/Issues/Defenders/VisionNext20Years.pdf.

⁴ Supplementary information 2: "World report on the situation of human rights defenders", available at www.ohchr.org/Documents/Issues/Defenders/WorldReportSituationHRD.pdf.

II. Significance of the Declaration on the Situation of Human Rights Defenders

9. In 1998, the Declaration on Human Rights Defenders was adopted following prolonged negotiations stretching back almost two decades. The text of the Declaration was drafted, debated and agreed upon in a lengthy series of meetings that brought together a diverse array of States and members of civil society.⁵ Civil society, and human rights defenders themselves, drove the negotiations forward through research, advocacy and interventions in the discussions. In a very real sense, the text of the Declaration represents less the beginning of the international community's recognition of human rights defenders, and more a fruit of its evolving understanding and its, at times reluctant, embrace of their role.

10. To be clear, human rights defenders were not born of the Declaration, rather the Declaration was born of the recognition of human rights defenders. The Declaration recognized a new approach to human rights as its founding principle: the centrality of individuals and groups within society to the realization of the human rights project. As such, it represents a paradigm shift away from a top-down, State-centric approach to the realization of human rights.

11. The Declaration was an act of international solidarity by the international community, through which it expressed its concern and support for the important role of human rights defenders in the enjoyment of the human rights recognized in the Universal Declaration of Human Rights. The Special Rapporteur recalls the aspiration in that Declaration to: "the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want". As noted by the previous Special Rapporteur, "the significance of the Declaration on Human Rights Defenders lies in its provision of legitimacy and protection to certain activities that protect and promote universally recognized human rights and fundamental freedoms" (A/66/203, para. 76).

12. The Declaration is an important element of an emerging regime of protection for human rights defenders at risk. Over the past 20 years, all stakeholders have developed a range of laws, policies and practices to better protect human rights defenders, ranging from international and regional mechanisms to national protective laws and national and local networks of human rights defenders. These good practices were the subject of a previous report of the Special Rapporteur (A/HRC/31/55).

13. The Declaration performs an important function as a "declaration on the protection of human rights defenders" despite the resistance of some States. However, it should also be read as a manifesto for the human rights movement, setting out the central role of every person and group within society in the realization of human rights for all. It would do a disservice to the struggle and suffering of human rights defenders at risk to restrict the scope of the Declaration to the protection of human rights and human rights defenders. Rather, the project of the Declaration is their struggle for the dignity, equality and worth of every person and their human rights. The resistance of some States to the protective goal of the Declaration is amplified when it comes to its broader project.

A. Human rights defenders

14. Although the Declaration is commonly referred to as the Declaration on Human Rights Defenders, it is important to recall that the term "human rights defender"

⁵ Janika Spannagel, "Declaration on Human Rights Defenders (1998)", in *Quellen zur Geschichte der Menschenrechte* (Arbeitskreis Menschenrechte, 2017).

cannot be found in its text. The rights outlined in the Declaration belong to all human beings, they are the rights of all of us, not the entitlements of a privileged elite or professional class. As recent reports of the Special Rapporteur have underscored, these rights belong to individuals, groups and social movements without distinction, including regardless of whether people choose or are able to register an association or not, their urban or rural location, the State or non-State objects of their advocacy, their particular human rights concern, their nationality or immigration status, or their gender. Everyone is a human rights defender when they take up the human rights project through peaceful means.

15. A human rights defender is any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional or international levels. Human rights defenders advocate, vindicate, enforce, protect and promote human rights. Actions taken by human rights defenders must be peaceful. Human rights defenders not only identify human rights violations, while drawing the attention of authorities to the consequences of their actions and omissions, but also perform a range of other roles, including assisting States parties in developing public policies to fulfil their obligations. In the more prosaic language of the official title of the Declaration, the rights in the Declaration belong to all "individuals, groups and organs of society".

16. In recent years, we have come to appreciate the diversity of the community of human rights defenders. Beyond the archetypal male civil and political human rights defender in a capital city working for a formally recognized non-governmental organization, there are, and have always been, countless individuals and groups defending human rights. A woman campaigning against corruption, indigenous communities defending their human rights and denouncing the negative impact of extractive or the so-called "development" projects on their rights and the environment, organizations working on social and economic rights, leaders of religious communities resisting extremism, parents seeking recognition and inclusion for their transgender child, a whistle-blower reporting on labour standards violations, a State official prosecuting those who have committed human rights violations, and those suffering from extreme poverty and deprivation fighting the exploitative systems that produce their predicament — all of these individuals and groups are human rights defenders. In recent years, the Special Rapporteur has sought to highlight some of the less visible groups of human rights defenders in his thematic reports, including environmental rights defenders, human rights defenders working with businesses and defenders of people on the move.

17. Inevitably, discussion has occurred among and between human rights defenders about the limits of the term and the activities of human rights defenders. For example, what are the limits on "peaceful means" imposed by the Declaration and international human rights law more generally? Equally, how should we apply the Declaration to individual actors who do not identify themselves as human rights defenders, for example, persons who consider themselves prisoners of conscience or political dissidents, and how can the Declaration be applied to groups, whether they be small and private such as families or large and public such as indigenous communities? As a community of practice develops, it is natural and beneficial that such discussions occur. In that light, the Special Rapporteur will seek in the coming years to develop interpretative guidance for the Declaration based on discussions with and the understandings of all stakeholders, including human rights defenders themselves.

B. Rights of human rights defenders

18. The focus of the Declaration is on the act of promoting and defending human rights and reaffirming the core human rights most needed by those who defend human rights. These human rights are set out in international and regional human rights treaties and form part of customary international law. As mapped in an earlier report of the Special Rapporteur to the General Assembly in 2011, there are nine key rights that are articulated in the Declaration: the right to be protected; the right to freedom of assembly; the right to freedom of association; the right to access and communicate with international bodies; the right to freedom of opinion and expression; the right to protest; the right to develop and discuss new human rights ideas; the right to a remedy; and the right to access funding (A/66/203). Importantly, the Declaration establishes no new rights, but rather articulates and restates human rights that are already enshrined in legally binding instruments.

19. The foregoing rights are instrumental to the defence of human rights. The implementation of these rights is a prerequisite for the creation of a safe and enabling environment for human rights defenders in which they can carry out their work. The Special Rapporteur calls particular attention to three of these rights in the context of the current challenges facing human rights defenders: the right to be protected; the right to develop and discuss new human rights ideas; and the right to access funding.

20. First, the right to be protected requires States both to refrain from violating the human rights of defenders and to act with due diligence to prevent, investigate and punish any violation of rights. The widespread impunity enjoyed by violators of the rights of defenders and the overlapping inaction and inability of States to tackle violations of the rights of human rights defenders committed by non-State actors, including notably, business actors (often with the complicity of States), are key challenges facing the realization of this right today. Although the Declaration has given rise to a human rights defender protection regime, State and civil society programming too often mitigates the effects of a failure to protect, rather than more actively addressing the root causes of violations and ensuring adequate preventative measures. The right to be protected, like the other rights enshrined in the Declaration, applies without discrimination.

21. Second, all individuals are entitled to freedom of expression and opinion. The Declaration also protects the right to develop and discuss new human rights ideas, allowing all people to be part of the progressive development of human rights ideas and to be actively engaged in setting new directions for the human rights project. This right recognizes that some of these new ideas may be culturally, religiously or politically controversial; it is precisely this potential for controversy that demands space for free and open discussion and debate. In recent years, human rights defenders seeking further discussion on sexual orientation and gender identity have faced repression in violation of this right.

22. Third, the right to access funding has been deeply affected by the misuse of global campaigns against money-laundering and terrorism as well as national efforts to curtail "foreign interference". In particular, this right protects the ability of defenders to raise funds internationally and underscores that even legitimate aims of the State cannot be used as pretexts to silence or reduce the activities of human rights defenders. The heightened penalties in Egypt's new law on non-governmental organizations (Law No. 70 of 2017), the discriminatory approach to "transparency" adopted in Israel and the Russian Federation in respect of the disclosure of civil society funding, and bureaucratic processes that effectively restrict access to foreign funding in India are examples of spreading bad practices that infringe upon the right to access funding. Ironically, in an age where the financial capital of transnational

corporations and international investments benefits from reduced barriers, human rights defenders increasingly face politically motivated restrictions in their access to funding. Troublingly, the approach of hiding restrictions on the right to access funding behind security and law enforcement rationales is being used as a model for restrictions on other rights; a wave of "cybercrime" legislation in countries ranging from Viet Nam to Egypt uses similar pretexts to restrict the freedom of opinion and expression of defenders.

23. As with all human rights, the rights within the Declaration are owed to all individuals without discrimination on any ground, including gender, disability, race, ethnicity, language, religion, political or other opinion, nationality or class. The prohibition of discrimination also extends to sexual orientation and gender identity.⁶ Defenders working on the human rights of marginalized groups or on socially or culturally sensitive topics too often face discrimination on the part of agents of the State and, unfortunately, within society and even civil society. This is particularly true when human rights defenders themselves are from marginalized groups. The discrimination against women human rights defenders is emblematic of this problem. Recent reports of the Special Rapporteur have also highlighted the discrimination faced by defenders of people on the move who may be refugees or migrants themselves and by indigenous peoples and rural communities opposing large-scale, extractive or development projects.

24. The rights outlined in the Declaration are subject only to limitations that are prescribed by law. Any limitations must be reasonable, necessary and proportionate. Such limitations must be solely for the purpose of securing due recognition and respect for the human rights and fundamental freedoms of others and meeting the requirements of public order and general welfare in a democratic society. Even where some rights or freedoms are restricted in a situation of emergency or to protect public order, the right to associate, advocate and protest in relation to the restrictions, in effect to monitor and debate the restrictions, can neither be restricted nor suspended. Restrictions on the right to defend human rights must be held to a very high standard; in times of great peril, the need for a robust civil society and independent voices, for independent monitoring and accounting, is even greater.

25. At the core of the Declaration's enumerated rights is the legitimacy of each of our individual and collective rights to participate in the human rights project. The Declaration makes human rights violations faced by any individual the concern of all of us; we each have a vested interest in the protection of human rights and have the right to participate in their discussion and promotion, in their monitoring and advocacy, and in ensuring their implementation. The Declaration reminds us that the human rights obligations of States are *erga omnes* in the broadest possible sense of the term: not just owed by a State to the right holder, nor only owed to the international community, but owed to us all by virtue of our shared humanity. As the then Secretary General Kofi Annan noted a few months before the adoption of the Declaration: "When the rights of human rights defenders are violated, all of our rights are put in jeopardy and all of us are made less safe."

C. Other obligations of States

26. The Declaration does not simply set out the rights of those who defend human rights. It also sets out some of the steps that States must take in implementing those rights. In the first 20 years of the Declaration, these other obligations contained in the

⁶ A/HRC/35/36, paras. 21-22. See also general comment No. 22 of the Committee on Economic, Social and Cultural Rights (E/C.12/GC/22, para. 23); general comment No. 35 of the Human Rights Committee (CCPR/C/GC/35, para. 3); *Young v. Australia* (2003) and *X v. Colombia* (2007).

Declaration have been overshadowed by the important discussion of and attention to violations of the rights of defenders. However, the path forward must be based upon renewed attention to these other obligations.

27. The first and foremost of these obligations is the requirement that a State create what has been termed a "safe and enabling environment" for human rights defenders. As noted in the Declaration, each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. With respect to human rights defenders, this obligation includes establishing a legal, institutional and administrative framework conducive to the activities of human rights defenders. The development of national legislation on human rights defenders, national protective mechanisms for human rights defenders at risk and best practices that promote and protect the rights to freedom of peaceful assembly and of association are all examples of initiatives seeking to realize this obligation. Similarly, many States have developed national guidelines and action plans on human rights defenders that seek to holistically address the State's responsibility to human rights defenders both within and outside its borders.

28. In addition, under the Declaration, States have an obligation to promote and facilitate human rights education. This obligation is particularly important in relation to State officials involved in the protection of human rights defenders, including lawyers, law enforcement officers, armed forces personnel and public officials. Human rights education includes public statements and support of public discourses about human rights defenders that recognize them as legitimate and important voices within society. As noted in the report of the Special Rapporteur on good practices, rights education can lead not only to a better understanding of a State's human rights obligations, but can also serve as a vehicle for understanding "the relationships that undergird the discourses and actions of human rights violators, human rights protectors, and human rights victims" (A/HRC/31/55, para. 81). The involvement of human rights defenders in human rights training programmes is important insofar that it can legitimize their role and activities and provides an opportunity for constructive dialogue.

III. Global survey of the situation of human rights defenders

29. Marking the end of her mandate and the first years of the Declaration, the Special Representative of the Secretary-General on human rights defenders conducted a global survey on the situation of human rights defenders in 2006 (see E/CN.4/2006/95/Add.5). The goal of the survey was to identify "the main areas of progress and the remaining challenges that need to be addressed in relation to the implementation of the Declaration". It has served, as intended, as a basis for action for her successors. However, as already noted in the present report, much has changed since the report of the Special Representative and it is appropriate on the twentieth anniversary of the Declaration to again seek a "comprehensive assessment of the situation for human rights defenders and the implementation of the Declaration on a global scale".

30. The current global survey seeks to update the first global survey and to capture the current situation of human rights defenders in more than 140 States Members of the United Nations and other territories. The global survey can be read both as an update on the particular situation of human rights defenders in each country or territory and as a global review of their shared situation, including recent trends and current widespread challenges. The development of the global survey has been supported by a team of close to 50 researchers from around the world and is based upon a range of data sources, including direct input from States, international and

regional organizations, national human rights institutions, civil society and human rights defenders themselves. Seeking to do more than simply update the initial survey, the global survey broadens the scope of its predecessor in terms of analysis, moving beyond the legal framework of the International Covenant on Civil and Political Rights and focusing instead on the rights enumerated in the Declaration. It also expands the scope of the survey both in terms of the number of States and other territories under review and in terms of the amount of data considered in its production.

31. First, the global survey draws on responses to questionnaires sent to States, international organizations, civil society organizations and a wide range of other stakeholders during the first half of 2018 on the implementation of the Declaration and the situation of human rights defenders; questionnaires were also posted on the website of the Special Rapporteur and distributed by social media. More than 150 responses were received from an international array of stakeholders. Second, the global survey draws on the documentary material on human rights defenders generated by States and national human rights institutions, by the processes of the United Nations and by civil society. Third, the country entries in the global survey draw upon the activities and expertise of the Special Rapporteur, in the form of country visits, communications and dialogues with the human rights defender community.

32. Importantly, wherever possible, the Special Rapporteur has sought to supplement the information from such reports with accounts from and about individual human rights defenders, in order to give a finer-grained, more tangible sense of the situation of actual human rights defenders in the States under review.

33. In relation to current widespread challenges, the global survey reveals the following three key issues facing human rights defenders globally: the evolution of the use of the term “human rights defenders”; the development of mechanisms and practices to support human rights defenders; and the use of legal and administrative frameworks to both protect and persecute defenders. Each of these are addressed below.

A. Evolution of the use of the term “human rights defenders”

34. First, the discussion of the situation of human rights defenders and the rise in the usage of the term has increased dramatically over the past 20 years. The country entries reveal a much wider set of individuals and groups identifying themselves as human rights defenders, using the term “defenders” and engaged in the challenges of defending human rights. For instance, the adoption by consensus of the landmark General Assembly resolution recognizing the situation of women human rights defenders in 2013 (resolution 68/181) is indicative of the broadening of the community. Despite this evolution, many human rights defenders remain unaware of or are unwilling to use the term (and the Declaration) until a situation of risk requires them to interact with the emerging human rights defender protective regime. The rights are expressed individualistically, with little explicit attention to social or community rights. Difficulties in applying the term to communities, collectives and networks are more than pedantic.

35. Unfortunately, not all of the discourse about human rights defenders has been positive or even productive. With the rise in the use of the term “human rights defenders” has come a “battle for narratives that generates an environment in which civil society is viewed with distrust and its demands are not seen as universal, but as

claims based on privilege and favour".⁷ Many country entries reveal troubling attacks on human rights defenders, whether the attacks are on all of them or on those engaged in specific issues, by the State, the media and powerful interests. Negative depictions in popular culture, even in such mundane productions as local soap operas or on radio and television call-in shows, have an insidious effect on the safety of defenders in already precarious situations. In otherwise safe and enabling societies, particular types of defenders can be singled out for vilification as evidenced by the anti-media rhetoric in the United States of America. Even children have reported fearing harassment and other more serious mistreatment if they speak up. Beyond countering such negative narratives of human rights defenders, the challenge is to create diverse, positive, role-affirming accounts of the defence of human rights.

36. We must recall that the Declaration not only obligates States to protect the rights of defenders and prevent violations of their rights but also to promote those rights. In addition, the Declaration imposes independent obligations on States to adopt appropriate administrative and legal frameworks to support the defence of human rights and to educate State officials and the public at large about their rights. As has been noted in many of the country entries, State officials are increasingly critical of human rights defenders. While actions and opinions should be open to free and open debate, too often the discussion of human rights defenders inappropriately questions their legitimacy and seeks to create a hostile, dangerous environment for their work. In such officially sanctioned discourses, defenders are portrayed as disconnected elites, dishonest or uninformed troublemakers, and foreign agents.

37. Even where State officials do not condemn human rights defenders, they are often silent in the face of criticisms of defenders by powerful social, political and economic interests. This silence can contribute to an environment of impunity for those who violate the rights of defenders. Such vitriol is a key element, both as cause and effect, of the closing civic space that has become widespread over the past two decades. It is necessary that States proactively express support for the defence of human rights and the rights of human rights defenders. Provisions in national legislation on human rights defenders, such as Mexico's Law for the Protection of Human Rights Defenders and Journalists, requiring key agents within the State to publicly support human rights defenders not only provide an important counter to existing dangerous discourses but also a path forward towards the prevention of future violations and the promotion of the right to defend human rights more generally. National and regional guidelines on the defence of human rights defenders must also not only address solidarity with and support for human rights defenders abroad but also strengthen the position of human rights defenders locally.

B. Development of mechanisms and practices to support human rights defenders

38. Second, over the past 20 years, a range of innovative practices to support human rights defenders have been developed and have spread. Civil society has led the way in the development of such practices. Country entries report on the creation of regional, national and local networks of support for human rights defenders, the expansion of programmes of protection, such as temporary relocation initiatives, and the development of international civil society organizations, networks and funding mechanisms to support particularly vulnerable human rights defenders. States have introduced national legislative frameworks to protect human rights defenders and created national protective mechanisms to institutionalize those frameworks. States

⁷ Ana Cernov, "Civil Society is not the Enemy", *Sur: International Journal on Human Rights*, vol. 14, No. 26 (2017), p. 55.

and regional and international organizations have also implemented policy guidelines on the treatment of human rights defenders, helping to realize the premise of the Declaration and the mandate of the Special Rapporteur that we share a collective concern for the situation of human rights defenders everywhere.

39. While the emergence of a protection regime for human rights defenders at risk is a positive development, the focus on security can too often sideline the broader well-being of human rights defenders and their families and communities. Reading between the lines of the individual cases and violations mentioned in numerous country entries, a broader and yet more troubling account of the ongoing human rights violations around the world emerges. Tactics such as self-care and deliberate invisibility are necessarily absent from mention in the entries; however, they play an important role in the response to threats and risk.

40. Regional organizations emerge as key players in the protection of human rights defenders. Despite their important role, many of their initiatives continue to suffer from significant resource constraints. While there are examples of supportive and collaborative relationships between human rights defenders and business, there are also concerns about the negative impact of business interests and practices on human rights defenders.

41. Bad practices have also expanded to the over-regulation of non-governmental organizations, limitations on the advocacy conducted by human rights defenders, reprisals against them and restrictions on the receipt of international funding.

C. Legal and administrative frameworks to support and persecute human rights defenders

42. The Declaration recognizes the importance of legal and administrative frameworks in the creation of safe and enabling environments for human rights defenders. Despite the obligation on States to introduce such frameworks and the numerous national legislative initiatives, and the law reforms and national policy guidelines reflected in the entries received, law and policy are also being used, unwittingly and deliberately, to frustrate the defence of human rights. Country entries reveal the use of administrative procedures and local by-laws to close human rights organizations, the prosecution of human rights defenders for fictitious tax and other offences and the criminalization of dissent through prosecution on various grounds, including for "defamation of the nation". Defenders such as Hassan Bouras in Algeria face decades-long investigations and shifting prosecutions for a range of offences related to their criticism of the State. Other human rights defenders in the Philippines face prosecution through the use of generic boilerplate prosecutions without individualized charges. It is regrettable that the law and legal processes have become both a shield for and a sword used against human rights defenders.

43. One of the consequences of this "lawfare" over human rights defenders is the position of the legal and judicial professions, both as potential guardians of the right to defend human rights and as persecutors of human rights defenders. Lawyers and members of their families are at particular risk when they take up the cases of human rights defenders or otherwise seek to promote the right to defend human rights. The country entry of China in the global survey is a particularly troubling example of this trend, although not the only such entry. Other professions ranging from educators to health professionals have also faced threats as a result of their pursuit of their professional ideals in support of human rights defenders. Professional regulatory bodies and training schools must adapt their practices to respond to these new threats.

IV. Mandate of the Special Rapporteur

44. The mandate of the Special Rapporteur arose from the deep concern of the international community about the situation of human rights defenders and that "in many countries, persons and organizations engaged in promoting and defending human rights and fundamental freedoms are often subjected to threats, harassment, insecurity, arbitrary detention and extrajudicial executions". This concern was first expressed in the resolution establishing the Special Representative of the Secretary-General on the situation of human rights defenders (which became, in 2008, the Special Rapporteur on the situation of human rights defenders) and has been echoed in every resolution continuing this mandate. The core function of the mandate holder is to engage in constructive dialogue with all members of the international community, including with human rights defenders themselves, with a view to addressing the persecution and insecurity suffered by too many human rights defenders. The mandate has served as a voice for human rights defenders within the United Nations system.

45. The mandate of the Special Rapporteur has developed alongside the Declaration. Over the course of almost two decades, various Special Rapporteurs have drawn the attention of the international community to the situation of human rights defenders through reports on thematic issues, including groups of human rights defenders, on communications with States and other stakeholders about the situation of particular defenders and on country visits. The reports of the Special Rapporteur have drawn attention to the situation of women human rights defenders and other defenders facing particular challenges. They have highlighted the particular importance of considering pressing issues through the lens of human rights defenders. The reports show how refocusing discussions on human rights defenders can reveal pathways to sustainable, effective, meaningful response to these global challenges. Since the beginning of the mandate, the thematic reports of the Special Rapporteurs have, among other accomplishments, contributed to the elaboration of the content of the Declaration, provided a framework for a safe and enabling environment for human rights defenders and their work (A/HRC/25/55) and articulated and collected examples of the seven principles that underpin good practices by States in the protection of human rights defenders (A/HRC/31/55).

46. The role of the Special Rapporteur has become increasingly demanding. Since the previous global survey, the various Special Rapporteurs on the situation of human rights defenders have conducted country visits to more than 20 States and received communications concerning more than 13,000 cases. The handling of these communications alone represents a significant activity of the Special Rapporteur and is often conducted in coordination with other special procedures mandate holders. A recent survey⁵ of human rights defenders involved in communications with the Special Rapporteur indicated that more than half of them were confident that the involvement of the Special Rapporteur had contributed to an improvement of their situation. Improvements in the situation of human rights defenders who are the subject of communications were particularly striking for those facing mistreatment by the State within the justice system, including complaints concerning unfair trials and arbitrary detention. However, a minority of human rights defenders also reported that communicating with the Special Rapporteur had contributed to a worsening of their situation. Following on earlier comments about fostering an effective, supportive relationship between the United Nations system and human rights defenders, the Special Rapporteur is committed to listening to all stakeholders about how to ensure that the communications process is effective and address any negative consequences that arise from interactions between the Special Rapporteur and human rights defenders at risk.

47. The Special Rapporteur has sought to respond to demands from human rights defenders, including in innovative ways, and has developed new activities to respond to changing circumstances. The Special Rapporteur has prioritized meeting with human rights defenders around the world, formally, as part of structured consultations on his reports and activities, and informally. These encounters and commitment to listening to their voice and plights both ensure the accuracy and currency of his interventions and express his support for and solidarity with their struggles. The Special Rapporteur has conducted a growing number of "academic visits" and other informal visits to States around the world with a view to providing technical support to States and to engaging with the public, members of academia, and local human rights defenders. He works closely to support a number of national human rights institutions in their development of programming on human rights defenders and has also sought to use his mandate to disseminate information, developing publicly accessible versions of his reports and using his profile on social media to publicize key developments.

V. Broadening the discussion about human rights defenders

48. As the global survey makes clear, any serious consideration of the situation of human rights defenders must examine not simply the roles of States and human rights defenders but also the roles of all stakeholders, including increasingly important actors such as regional organizations, businesses and the United Nations.

A. Regional organizations

49. Regional organizations are playing a prominent role in the protection of human rights defenders. The coming year marks the fifteenth anniversary of the European Union Guidelines on Human Rights Defenders adopted in 2004 and revised in 2008, which have informed important changes in practices by overseas diplomatic representatives of the European Union. The Organization for Security and Cooperation in Europe and the Council of Europe have a long-standing engagement with the protection of human rights defenders, predating the adoption of the Declaration. The Organization of American States has created a rapporteurship on human rights defenders and the precautionary and provisional measures issued by its human rights institutions are an important protective mechanism for human rights defenders at risk. Similarly, the African Commission on Human and Peoples' Rights of the African Union created the position of Special Rapporteur on the situation of human rights defenders in 2004 and has developed, with human rights defenders themselves, important guidelines on freedom of association and assembly.

50. Within other regional organizations, human rights defenders have struggled to be recognized. The institutions of the Association of Southeast Asian Nations (ASEAN) have been particularly hostile to the participation of human rights defenders and to addressing their situation in the region despite its commitment to a "people-oriented ASEAN". However, while the ASEAN Intergovernmental Commission on Human Rights has been less visibly active on the situation of human rights defenders, it has nonetheless supported important initiatives aimed at increasing the participation of environmental human rights defenders, sharing good practice on business and human rights and facilitating the application of international human rights law in local courts. Hopefully, in the coming years, the Intergovernmental Commission will more explicitly engage with the very difficult situation of human rights defenders in the region. The Special Rapporteur expresses his willingness to work with regional bodies to facilitate the sharing of expertise and good practice between them. Regional

organizations represent important forums to discuss and respond to the particular challenges faced by human rights defenders within the region.

B. Business and human rights

51. As noted in the recent report of the Special Rapporteur on the subject, businesses have become an increasingly important actor in relation to human rights defenders (A/72/170). For defending human rights from the negative impact linked to business activities, ordinary people, communities, workers and trade unionists face stigmatization, criminalization, physical attacks and sometimes death. Business agendas and so-called development plans or projects are often intertwined with powerful economic, social and political interests that may seriously undermine the human rights of those already discriminated against and the prospects for sustainable development. Human rights defenders denouncing and opposing such practices are faced with serious threats, violence and other violations of their rights. The increasingly transnational nature of business enterprise makes the treatment of human rights defenders by business an international problem; businesses are often controlled and headquartered abroad and export their outputs to a wide range of markets. However, the increasingly international nature of business also provides avenues for the promotion of good practice in relation to human rights defenders, including through the linkage of trade and development allowances and the regulation of investments to the existence of a safe and enabling environment for defenders.

52. While States continue to be primary duty bearers, non-State actors such as businesses have the responsibility to promote and respect the rights of defenders. The Declaration prohibits the active or passive participation in human rights violations also by non-State actors. The Guiding Principles on Business and Human Rights reiterate three complementary duties: of States, to protect citizens from human rights abuses by third parties; of business, to respect human rights; and of all, to facilitate greater access for victims of business-related abuse to effective remedy.

53. It is important to focus particular attention on the relationship between business and human rights defenders on this important anniversary for a number of reasons. First, business interests continue to drive the world towards increasing globalization and marketization. States face a growing regulatory challenge in relation to governing increasingly powerful business interests; the challenge of ensuring the support of businesses to the important role of human rights defenders and respect for the human rights of all will only become both more difficult and more important in coming years. Second, the recognition of the importance of business actors by the international community is part of a wider trend towards recognizing the important role of non-State actors. In coming years, we will need to more explicitly grapple with the relationship of human rights defenders to a long list of non-State actors, including the media, religious leaders and non-State armed groups. The successes and failures in engaging with business interests will be an important factor in the negotiation of these relationships.

C. United Nations system

54. Human rights defenders, as an important part of civil society, have long been key actors in the international human rights system. It is often forgotten that the representatives of civil society far outnumbered State representatives at the founding of the United Nations and that since its earliest days, the United Nations has recognized civil society as an important means for ensuring that the interests of the peoples of the United Nations are fulfilled. As recognized by the Secretary-General,

the work of the Human Rights Council and other bodies of the United Nations is strengthened by engagement with civil society (see Human Rights Council resolution 32/31).

55. Human rights defenders play a crucial role within the United Nations human rights system. As noted by the recent joint statement by a group of chairs, vice-chairs and members of United Nations human rights treaty bodies, the international human rights system relies upon human rights defenders "being able to act freely and without any interference, intimidation, abuse, threat, violence, reprisal or undue restriction."⁸ Human rights defenders assist States parties in the realization of their human rights obligations and are themselves rights holders, entitled to discuss their situation and seek remedies in international forums.

56. In recent years, human rights defenders have faced reprisals because of their participation in and promotion of discussions concerning human rights within the United Nations system. The Human Rights Council has condemned all acts of intimidation and reprisal committed by Governments and non-State actors and the Presidents of the Human Rights Council have used their good office to address allegations of intimidation and reprisal experienced by those engaging with the Council. Recently, the Secretary-General appointed the Assistant Secretary-General for Human Rights to lead the efforts within the United Nations system to address reprisals against those cooperating with the Organization on human rights issues. While these developments are welcome, reprisals continue and are of grave concern (see A/HRC/36/31). In the past two years, human rights defenders have faced disbarment, refusal of exit permits, travel bans, assault, threats against their families, intimidation, arrest and torture, enforced disappearance, exile and death also in relation to their cooperation with the United Nations on human rights. Even within United Nations human rights forums, Member States have silenced human rights defenders by raising unfounded security concerns about their participation, attempting to deregister non-governmental organizations associated with dissident voices, prohibiting State agents from cooperating with special procedures and otherwise reducing and objecting to the participation of human rights defenders in discussions. The safe and enabling environment we seek to create for human rights defenders must extend to the international human rights system itself.

57. The agencies and offices of the United Nations system must also do more to welcome human rights defenders into their deliberations; human rights defenders of all types should be invited into the discussions and debates within the agencies and offices of the United Nations system. Participation in consultative forums should not needlessly exclude human rights defenders who have been unable, because of restrictive State policies, to register their associations or obtain travel clearances. Operational and field offices of the United Nations system have often supported the operations of international civil society organizations through co-location and other forms of support; more consideration should be given to the support of local civil society organizations, including human rights defenders who assist the United Nations in the performance of its mission. The United Nations system must be mindful of not inadvertently reproducing the restrictive practices of some States.

58. Within the United Nations system, the Special Rapporteur has also, in previous reports, called for the strengthening of its support for human rights defenders. The Special Rapporteur encourages the sharing of good local practices such as those adopted by the United Nations Entity for Gender Equality and the Empowerment of Women to train and support "young women leaders" and to encourage participation

⁸ Twentieth anniversary of the Declaration on Human Rights Defenders: Joint statement by a group of chairs, vice-chairs and members of the United Nations human rights treaty bodies and the Special Rapporteur on the situation of human rights defenders (June 2018).

by human rights defenders in its various country and regional planning forums. The situation of human rights defenders should be actively strengthened through the operations of the United Nations. Particularly because its operational role is so often in difficult environments, the United Nations must demonstrate good practice in the support of human rights defenders, including by recognizing the legitimacy of human rights defenders and their defence of human rights. However, work needs to be done to follow up on some of the specific recommendations of the Special Rapporteur in previous reports.

59. In addressing the challenges facing the world, whether it be sustainable development, climate change, forced displacement and mass migration, or countless other issues of international importance, the participation and involvement of civil society generally, and human rights defenders specifically, is vital for the success of these initiatives. The advocacy of human rights defenders has clearly contributed to the international consensus on these issues. They have exposed the labour exploitation of globalized supply chains, revealed the environmental plunder of areas of unique fauna and flora and rescued people on the move from perilous situations on the high seas. Looking to the future, the agreements, compacts and action plans of the international community addressing these issues will not be successful without the continuing work of human rights defenders in monitoring and evaluating their implementation, developing and advocating for better practices and vernacularizing the international consensus reached in the various forums of the United Nations.

VI. The next 20 years

60. The current anniversary of the Declaration is an opportunity not only to review the situation of human rights defenders, the progress made and challenges faced since the adoption of the Declaration, but also to set out a vision for the coming years. Imagining the next 20 years is not the task of a single individual, group or organization but rather a collective one for all stakeholders, including human rights defenders. In order to facilitate the development of a collective vision, the Special Rapporteur will be participating in a number of workshops, events and dialogues during the twentieth anniversary year. Notably, human rights defenders, civil society organizations, States and international organizations will meet in Paris in the autumn of 2018, within the framework of the second Human Rights Defenders World Summit. The Summit will provide an opportunity to reflect on the main achievements and challenges since the adoption of the Declaration and will support the recognition of the important role of defenders in promoting and defending human rights in the world. Importantly, a high-level dialogue will be held in New York by States Members of the United Nations. Some preliminary reflections about the project for the coming years are elaborated in the statement of vision for the Declaration on Human Rights Defenders referred to in paragraph 8 above. Considering the journey ahead, there are three key issues that, in the view of the Special Rapporteur, need to be part of the global conversation about the future of human rights defenders and the Declaration. These issues can, for the sake of simplicity, be articulated as questions: Who is a human rights defender? What is the Declaration on Human Rights Defenders? What is the relationship between human rights defenders and the State?

61. First, any vision for the future must seek to further clarify the definition of a human rights defender and related questions, such as the non-violence clause. As noted previously, this definition is absent from the Declaration and has been given a broad interpretation by the community of practice. However, beyond this formally broad definition, certain types of human rights defenders have been privileged. Inevitably, the membership of the community of practice is an important determinant of the issues that are identified as important and in need of international attention.

How can the community of practice expand in scope to include defenders who have previously been passively overlooked or actively excluded?

62. Further, having touched upon the challenge of incorporating groups and communities into the implementation of the Declaration, how can our understanding of the term also embrace the "groups and organs of society" contemplated in the title of the Declaration? The community of practice has grown phenomenally over the past 20 years, with new groups of practitioners joining and new generations of defenders expanding the numbers of those that campaigned for the Declaration. However, many individuals who take up the defence of human rights today are unaware of the Declaration and the term "human rights defender" or are unwilling to take on its mantle, whether it be out of fear of reprisals or their inability to recognize their role as one that deserves the label. New social movements have produced social and political revolutions in the past 20 years and yet these movements often have an uncomfortable relationship with the mainstream human rights movement, using the language of social justice rather than that of the defence of human rights. Children, the elderly, persons with disabilities and other marginalized groups continue to face barriers as defenders of human rights. It is imperative to seek ways to bring the perceptions and concerns of such individuals and groups into the discussion of the future of the human rights defender community.

63. Second, any vision must address the significance and role of the Declaration. Although it is appropriately at the centre of this year's celebrations, what will be the future of the Declaration? This question is asked by a friend of the Declaration and an ally of human rights defenders. However, as noted previously, key elements of the Declaration are without definition or have been the source of debate within the human rights defender community. What processes and forums can be used in any such elaboration?

64. Historically, the vision of the negotiators of the Declaration was that it would serve as a milestone in the struggle for human rights — a precursor to a binding international treaty protecting human rights defenders. Such a vision has been described as naïve in the light of the risks, threats, attacks and violations faced by human rights defenders since the adoption of the Declaration and unambitious in the light of the existing binding legal status of the rights and obligations in the Declaration.

65. Third, a key issue that emerged in the negotiation of the Declaration was the relationship of defenders with States and other non-State actors. The situation of human rights defenders is no longer, or perhaps never was, determined exclusively by the actions and policies of the State. Moving beyond the relationship between rights holders and the State, the Declaration raises a number of questions about the obligations owed by human rights defenders to each other and to the peoples of their societies. Without reverting to the unhelpful discourse of human rights defenders' obligations to the State that needlessly prolonged the negotiation of the Declaration, the coming years must see further elaboration of an ethics of human rights practice. The above-mentioned discussions of the limits of the community of human rights defenders also raise debates about the possibility of State agents, including civil servants, judges and police officers, being human rights defenders, echoing earlier principled and pragmatic debates about the independence from the State of national human rights institutions.

VII. Conclusion and recommendations

66. In the face of great adversity, human rights defenders persist in striving for the protection and realization of human rights and fundamental freedoms. Their tenacity is reflected in the words of Bertita Cáceres, daughter of a murdered woman human rights defender, explaining the continuation of her own struggle: "I was born into a people of great dignity and of great strength. And my mother, Berta Cáceres, instilled upon us, from a very young age, that the struggle is rooted in dignity and that we must continue forward defending the rights of our people."

67. It is with such acts of courage in mind that the Declaration on Human Rights Defenders celebrates its twentieth anniversary alongside the seventieth anniversary of the Universal Declaration of Human Rights. The Declaration on Human Rights Defenders represents the deliberate and considered recognition by the international community of the fundamental importance of individuals, groups and organs of society in the realization of the ambitions of its much older predecessor. Just as the drafters of the Universal Declaration of Human Rights would be disappointed by the violations of human rights and affronts to dignity that continue today, so too would those many contributors to the text of the Declaration on Human Rights Defenders be disappointed by the ongoing indifference, contempt, officiousness and violence faced by human rights defenders in many parts of the world two decades on.

68. The global survey reveals that the discourses surrounding human rights defenders often exacerbate the risks they face. However, since the previous global survey, there has been a marked elaboration of the protection regime for human rights defenders at the local, national and international levels. While civil society and States have developed new programmes of protection, new actors in protection such as regional organizations have also emerged. Some progress has been made in fulfilling the obligation to create appropriate legal and administrative frameworks for human rights defenders, but those frameworks are too often used to persecute rather than support human rights defenders.

69. As with the moment of the adoption of the Declaration, our mood on this anniversary must be toughened by the continuing struggles of defenders in many parts of the world. Even while the community of human rights defenders has broadened its scope and strengthened its practice, the violations, abuse and indignities suffered by human rights defenders point to the challenges hindering the full realization of human rights and the implementation of both the Universal Declaration of Human Rights and the Declaration on Human Rights Defenders itself. The international community, including all States Members of the United Nations, bears responsibility for the collective failure to fully respect the inherent dignity and the equal and inalienable rights of all peoples of the world.

70. A renewed commitment to the Declaration on Human Rights Defenders presents the best pathway towards the realization of the human rights and freedoms enshrined in the Declaration. The struggles of human rights defenders are not without hope. In the spirit of the diverse, transnational and intergenerational social movement that is the human rights defender community, it is apt to close with a saying adopted by various groups in their struggle, from youth and student human rights defenders in Mexico to sexual orientation and gender identity activists in Greece: "Nos enterraron sin saber que también somos semillas." (They buried us not knowing that we are also seeds.)

71. The Special Rapporteur recommends that all stakeholders engaged in the protection of human rights defenders:

(a) **Mark the twentieth anniversary of the Declaration on Human Rights Defenders by publicly recommitting to the rights and obligations contained in the Declaration;**

(b) **Ensure that their policies and/or practices fully recognize the important role of human rights defenders as important contributors to State and non-State processes and as rights holders crucial to the realization of human rights;**

(c) **Encourage and value the genuine, free and full participation of the broad and diverse community of human rights defenders in the development of programming, policies and practice relevant to their human rights work.**

72. The Special Rapporteur recommends that States:

Adopt necessary legislative and administrative measures, including good practices noted by the Special Rapporteur (see A/HRC/31/55), to ensure that human rights defenders enjoy a safe and enabling environment, including through the introduction of guidelines on human rights defenders, the creation of national protective and coordination mechanisms and legislation formally guaranteeing the rights in the Declaration.

73. The Special Rapporteur recommends that the institutions and processes of the United Nations system:

(a) **Take steps to widen the participation of human rights defenders in the discussions of the United Nations, ensuring through continued vigilance that human rights defenders are able to participate in United Nations processes without fear of reprisal;**

(b) **Reform policies and practices to ensure that the institutions and processes of the United Nations, in their relationship to human rights defenders, serve as a model for States and other stakeholders in addressing the protection needs of defenders, especially in difficult environments and for defenders facing heightened risk or vulnerability and by taking action on the Special Rapporteur's recommendations to the United Nations system contained in previous reports.**

74. The Special Rapporteur recommends that regional organizations:

Commit to the further development, adequate resourcing and sharing of good practices within such organizations to address the situation of human rights defenders.

75. The Special Rapporteur recommends that civil society and human rights defenders:

(a) **Develop and participate in programmes of action, discussion and education to mark the twentieth anniversary of the Declaration on Human Rights Defenders;**

(b) **Broaden and deepen their community of practice, including by bringing new actors such as professional associations into the discussion of human rights defenders at risk and by being inclusive of previously marginalized and new human rights defenders, by recognizing groups and collectives defending human rights and by taking and instigating opportunities for sharing knowledge and effective practices among different parts of the community.**



General Assembly

Distr.: General

27 July 2018

Original: English

Seventy-third session

Item 74 (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, submitted in accordance with Human Rights Council resolutions 6/29 and 33/9.

* A/73/150.



Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Summary

In the present report, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health addresses the opportunities and challenges for the realization of the right to mental health of people on the move, in a global context where discriminatory attitudes and xenophobic political rhetoric have created environments of fear and intolerance. Those environments damage the quality of human relationships, bring mistrust, disrespect and intolerance into societal life, affect the realization of the right to mental health of people on the move and interfere with the right of all to mental health.

Rights-based responses to mental health and migration are presented as transformative opportunities to rebuild and strengthen health and social systems that support and restore dignity, inclusion and rights for everyone.

In the report, the Special Rapporteur presents a series of recommendations for States and relevant stakeholders within the humanitarian, development and human rights communities to address comprehensively the identified challenges.

Contents

	<i>Page</i>
I. Introduction: the right to mental health and migration	4
II. Terminology and scope of the report	4
III. Global context: opportunities and obstacles	5
A. Opportunities	7
B. Obstacles	8
IV. Right to mental health framework and people on the move	11
A. Obligations	11
B. International cooperation and assistance	12
C. Participation and access to information	13
D. Accountability	14
E. Social determinants of mental health in the context of migration	14
F. Care and support	15
V. Issues in focus	19
A. Children and families	19
B. Detention	21
VI. Conclusions and recommendations	21

I. Introduction: the right to mental health and migration

1. In their previous reports, country missions and other activities, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and his predecessors have highlighted how discrimination, intolerance and a selective approach to human rights undermines the full and effective realization of the right to physical and mental health for everyone, regardless of nationality, migration status or citizenship. In the present report, the Special Rapporteur addresses the relationship between migration and the right to mental health. He focuses on the role that the right to mental health can play in scrutinizing the current political, humanitarian and public health responses to people on the move as well as in host communities and countries. He also considers how rights-based responses to mental health and migration present transformative opportunities to rebuild and strengthen health and social systems in order to support and restore dignity, inclusion and rights for everyone.

2. As we mark the seventieth anniversary of the adoption of the Universal Declaration of Human Rights, universal human rights principles are under attack. Globally, the discourse around migration and people on the move emphasizes negative portrayals rooted in misinformation and fear. This has worrying implications for the full and effective realisation of the right to health, particularly the right to mental health, for those on the move and the communities and countries that host them. As the Global Compact for Safe, Regular and Orderly Migration reaches finalization and as the world continues to grapple with human mobility coupled with severe violations of the rights of migrants and refugees, the right to mental health for all must be grounded in the context of a sustainable development agenda that seeks to realize that right equally for all people.

3. Recognizing that the right to mental health has received relatively little attention as a central component of the right to health, the Special Rapporteur highlights in the present report the specific barriers and opportunities pertinent to the realization of that right in the context of migration.

II. Terminology and scope of the report

4. There is no universal definition of people on the move. For the purposes of the present report, the term "person on the move" refers to an individual who is moving across or has crossed an international border, or has moved from their habitual place of residence, and regardless of legal status, whether the movement is voluntary or involuntary, the causes for the movement or the length of the stay.¹ Recognizing that the terminology relating to people on the move is contested, the report aims to emphasize inclusivity: regardless of whether the people are refugees, asylum seekers, migrant workers or irregular migrants, they are primarily rights-holders. The Special Rapporteur is principally concerned with those who have experienced some form of adversity owing to the nature of their departure, journey and/or reception in a new community.

5. Given the breadth and scale of the issue of migration and the right to mental health, a comprehensive assessment is not possible within the constraints of the present report. This is an initial contribution, focused on some practices where the right to mental health is a key element in meaningful assessment and guidance.

¹ The Hague Process on Refugees and Migrants and United Nations Educational, Scientific and Cultural Organization (UNESCO), "People on the move: handbook of selected terms and concepts" (2008).

6. It is important to emphasize that being a person on the move should never be understood as a mental health issue in itself. Migration status lies exclusively in the political realm, but does have implications for mental health, which the report seeks to explore. People on the move are ordinary human beings who must leave for a variety of complex, often sociopolitical reasons.

7. People on the move have long been categorized and labelled as either “deserving” or “undeserving” of refuge or settlement based on their reasons for migrating.² However, greater emphasis needs to be placed on the factors that drive human mobility. Structural and political forms of violence that create poor social and economic conditions are key mobility drivers. Legal and other barriers hinder the participation of those deemed undeserving in host communities, exacerbating this structural violence and engaging significant human rights questions, including the right to mental health.³

8. Like all aspects of health, a range of biological, social and psychological factors affect mental health.⁴ Placing our understanding of mental health within the broader landscape of a person’s political, social, cultural and economic life will assist duty-bearers in identifying their obligations to respect, protect and fulfil the right to mental health.

9. Securing the right to mental health in the context of migration calls into question many complex issues, including humanitarian, fragile or war-torn States, occupied territories, urban and rural communities, robust, absent or failing national health systems and detention settings.

III. Global context: opportunities and obstacles

10. More than 250 million people live outside their country of birth.⁵ According to the Office of the United Nations High Commissioner for Refugees (UNHCR), currently there are 65.6 million forcibly displaced people around the world.⁶ They have been forced from their homes by violence and war, by religious, ethnic, cultural and other forms of persecution, and by famine, poverty, environmental disaster, discrimination and other forms of systemic and acute deprivations.⁷ In many cases, they have left behind family, community and roots in search of safety and survival.

11. The migration of people and ideas is the foundation of the advancement of human civilization. In human history, no time or place has been unaffected by the phenomenon of people on the move and the exchange of the ideas they bring. They have shaped the communities, societies, borders and institutions we inhabit today. Migration “crises” have been a dark part of our history, from imperial pillages and sieges, genocidal incursions on indigenous lands and military and colonial

² Seth M. Holmes and Heide Castañeda, “Representing the ‘European refugee crisis’ in Germany and beyond: deservingness and difference, life and death”, *American Ethnologist*, vol. 43, No. 1 (February 2016).

³ Ibid.

⁴ See World Health Organization (WHO), *Mental Health Action Plan 2013–2020* (Geneva, 2013).

⁵ United Nations, Department of Economic and Social Affairs, Population Division, “Trends in international migrant stock”, International migrant stock: the 2017 revision. Available at http://www.un.org/en/development/desa/population/migration/data/estimates2/data/UN_MigrantStockTotal_2017.xlsx.

⁶ Office of the United Nations High Commissioner for Refugees (UNHCR), “Figures at a Glance”. Available at <http://www.unhcr.org/en-us/figures-at-a-glance.html>.

⁷ UNHCR, “Figures at a Glance”. These figures include refugees and internally displaced persons only. The larger number of migrants including migrants in vulnerable situations, many of whom move irregularly, are not included.

occupations of lands and continents. The modern context of forced migration is in many respects a legacy of those movements of domination and subjugation.

12. In recent decades, the world has experienced unprecedented movements of forcibly displaced people, originating and primarily remaining in low-income countries of the Global South. For example, almost 90 per cent of refugees seek haven in neighbouring countries and just 10 countries host 60 per cent of the global refugee population.⁸

13. In 2015, for the first time in history, more than one million refugees broke through the artificial Global North/South barrier and arrived in Europe, just as Europe was in the midst of a political and economic crisis that saw many countries mired in the harmful effects of austerity and growing socioeconomic inequality. The timing was unfortunate, as populist forces opportunistically created a narrative that the “refugee crisis” presented a threat — a misleading and simplified explanation for national discontent that has fuelled nationalistic fervour. The political and moral crisis in Europe, combined with anti-migrant-related developments in the United States of America, continue to capture headlines.⁹ This has brought renewed global attention — for better or worse — to the situation of people on the move and how we respond to migration as a global community, including in the realization of the right to mental health.

14. In 2016, in the New York Declaration for Refugees and Migrants, States Members of the United Nations made a bold political commitment to protecting the rights of refugees and migrants regardless of status. As a result, in 2018, Member States will adopt two global compacts on refugees and migrants, setting the scene for more robust promotion and protection of their human rights, including their right to mental health.

15. At the same time, mental health has recently emerged as a global health, human development and human rights priority. The 2030 Agenda for Sustainable Development mentions mental health, and its inclusive approach explicitly considers refugees, internally displaced persons and migrants as people who are in a vulnerable situation and must be empowered. Within the international humanitarian sector, mental health also has become a priority with the adoption in 2007 of the Guidelines on Mental Health and Psychosocial Support in Emergency Settings. In the sphere of human rights, the Convention on the Rights of Persons with Disabilities has provided a bold and transformative foundation to mental health for persons with disabilities, including people on the move. Subsequent political commitments from the Human Rights Council, including its resolutions 32/18 and 36/13, have reaffirmed the richness of the political soil for change. Not to be dismissed are the courageous efforts of grass-roots actors, migrants and refugees, host communities and mental health workers, who have shown how resilience, tolerance, inclusion and harnessing social capital can support the well-being of entire communities. Far removed from the loud political rhetoric of fear and xenophobia, remarkable and often defiant community action should be acknowledged and promoted.

16. The above developments highlight the need to address obstacles to the realization of the right to mental health for people on the move and the broader communities that host them.

⁸ Alexander Betts and Peter Collier, *Refuge: Transforming a Broken Refugee System* (London, Allen Lane, 2017).

⁹ See communications Nos. UA USA 2/2018, UA USA 27/2017, OL USA 23/2017 and UA USA 21/2017, available from <https://spcommreports.ohchr.org>.

A. Opportunities

Building back better: strengthening mental health systems for all

17. Worldwide, mental health systems face acute challenges, ranging from a lack of political prioritization, significant resource constraints and segregated and overmedicalized psychiatric care. The efforts under way in many parts of the world to strengthen mental health systems represent an opportunity to consider how those systems advance the realization of the right to mental health for all people, including people on the move, on an equal basis.

18. Humanitarian and development actors are beginning to recognize the need to ensure that emergency systems are aligned with broader efforts to foster sustainable development.¹⁰ In host countries and communities, parallel health systems can stigmatize people on the move and create tensions with local communities and are not economically sustainable. Instead, health systems should strive to provide the highest quality of care and support to all people, including people on the move, on an equal basis.

19. Guidance from the World Health Organization (WHO) illustrates how emergencies can present opportunities to address the need to improve mental health systems for all people in post-emergency settings, including but not limited to people on the move.¹¹

Potential contribution of migration to community well-being

20. When given an enabling environment to thrive, people on the move are overwhelmingly net contributors to the economies of their host countries and communities.¹² Research illustrates that the contribution they make to their host economies can sometimes be more than twice the cost of hosting a migrant or refugee.¹³ In the past, immigrants have represented 47 per cent of the increase in the United States workforce and 70 per cent that of Europe.¹⁴ A recent study in the United States showed that, within 6 months of resettling, 84 per cent of resettled refugees had become self-sufficient and many employed locals in their own businesses.¹⁵ Human mobility has the potential to end extreme poverty and drive global economic growth in a manner that is sustainable, in keeping with the broader goals of the 2030 Agenda for Sustainable Development. In addition to the contribution that people on the move make by adding to the diversity of their host communities, they can also aid

¹⁰ World Bank, "Leaders launch new humanitarian-development partnership to respond to forced displacement and global crises", press release, 16 March 2016. Available at <http://www.worldbank.org/en/news/press-release/2016/03/16/new-humanitarian-development-partnership-forced-displacement-global-crises>.

¹¹ WHO, *Building Back Better: Sustainable Mental Health Care After Emergencies* (Geneva, 2013); Ministry of Public Health, *Mental health and substance abuse: prevention, promotion and treatment — situation analysis and strategy for Lebanon 2015–2020* (Beirut, 2015). Available at <http://www.mhinnovation.net/resources/national-mental-health-strategy-lebanon#.VwxpS6s4n-l>.

¹² Amandine Aubry, Michal Burzynski and Frédéric Docquier, "The welfare impact of global migration in OECD countries", *Journal of International Economics*, vol. 101 (July 2016); Graeme Hugo, "The economic contribution of humanitarian settlers in Australia", *International Migration*, vol. 52, No. 2 (April 2014); Grația Georgiana Noja and others, "Migrants' role in enhancing the economic development of host countries: empirical evidence from Europe", *Sustainability*, vol. 10, No. 3 (March 2018).

¹³ International Rescue Committee, "Why are refugees good for the economy?". Available at <https://www.rescue.org/video/why-are-refugees-good-economy>.

¹⁴ Organization for Economic Cooperation and Development (OECD), "Is migration good for the economy?", *Migration Policy Debates*, May 2014. Available at <https://www.oecd.org/migration/OECD%20Migration%20Policy%20Debates%20Numero%202.pdf>.

¹⁵ Ibid.

in the creation of jobs, in counteracting the effects of ageing populations and in improving productivity.¹⁶

21. When enabled to participate in the economic well-being of host communities, people on the move can contribute to the overall well-being of the societies in which they reside. The importance of creating an enabling legal and policy environment for people on the move to thrive in their host communities cannot be overstated. Similarly, the diversity of ideas and contributions from people on the move can be important assets for host communities when such an environment is created. Research demonstrates the value of inclusion and “diversity dividends”, noting that the knowledge, skills and expertise of diverse inhabitants can contribute economically and culturally in an increasingly globalized world.¹⁷

22. Holistic investment in the right to mental health of people on the move and their host communities can help to reconcile differences and confront the root causes of intolerance and exclusion, which in turn can provide a rich opportunity to promote healthy and cohesive societies.

B. Obstacles

23. In a previous report (A/HRC/35/21), the Special Rapporteur cautioned that elevating mental health as a global priority through the use of a “burden of disease” model was not enough to create the conditions necessary to bring about effective rights-based change regarding mental health in policy, law and practice. That caution rings even more loudly in the context of mental health and migration. It is essential to assess carefully the key obstacles that burden stakeholders in order to ensure that the right to mental health is prioritized in the context of migration.

Power asymmetries

24. A key obstacle to the promotion and protection of the right to mental health in the context of migration is the vast landscape of unequal power relations within the sociopolitical, health-care and sometimes even humanitarian settings. The trajectories of the lives of people on the move are largely shaped by global and national structures of power and governance and the political choices they make, which have significant implications for the right to mental health.

25. Conflict, violence and socioeconomic inequalities — by-products of powerful political structures — are key drivers of displacement and a significant determinant of mental health. Similarly, the discriminatory treatment of many people on the move in host countries reflects complex social hierarchies and power relations.¹⁸ Politically opportunistic and xenophobic rhetoric, laws and policies have significant implications for the mental health of people on the move and their communities of departure, transit and destination.

¹⁶ World Bank Group, *Global Monitoring Report 2015/2016: Development Goals in an Era of Demographic Change* (Washington, D.C., 2016).

¹⁷ Mark Kaplan and Mason Donovan, *Inclusion Dividend: Why Investing in Diversity and Inclusion Pays Off* (London, Routledge, 2013); Emery N. Castle, “Rural diversity: an American asset”, *Annals of the American Academy of Political and Social Science*, vol. 529, No. 1 (September 1993); Stephen Syrett and Leandro Sepulveda, “Realising the diversity dividend: population diversity and urban economic development”, *Environment and Planning A: Economy and Space*, vol. 43, No. 2 (February 2011).

¹⁸ Michele G. Shedlin and others, “Sending-country violence and receiving-country discrimination: effects on the health of Colombian refugees in Ecuador”, *Journal of Immigrant and Minority Health*, vol. 16, No. 1 (February 2014).

26. Such violence has roots in unhealthy and unequal relationships among individuals and is reinforced by the failure to promote and protect good-quality human relations.¹⁹ These hierarchies are reinforced by powerful political actors who incite fear and xenophobia, often using myths purported as facts. For example, the connection between rises in criminality and rises in migration — a proven falsehood — continues to be perpetuated. Once the cloak of “false news” is lifted, these political actors are exposed as peddlers of fear, incapable of offering real solutions for the social struggles of constituencies.

27. Creating an environment of fear and intolerance is detrimental not only to the mental health and well-being of people on the move but also of all people exposed to such rhetoric. In order to protect, respect and fulfil the right to mental health for all people, including people on the move, the barriers to the development of strong communities characterized by good-quality human relations must be addressed as a shared, global priority.

28. Those in positions of power have a responsibility to act in furtherance of the dignity and well-being of all people, including people on the move. However, recent developments in many States seem to reflect a deliberate attempt to violate the rights of people on the move or to hinder their mobility, including by introducing laws and policies that punish migrants and refugees and those who aid them.²⁰ Discriminatory laws, including those that criminalize people on the basis of their immigration status, can have severe implications on the human rights of people on the move, including their right to mental health.²¹

29. Within the development sector, and even within the humanitarian sector, there is a need to be self-critical about how diverse the stakeholders are who contribute to the global discourse around human mobility, protection and public health. People on the move, as those affected most directly, should be afforded a voice in responses to emergencies. The sustainability and efficacy of humanitarian responses should be prioritized, while charity-oriented models that fail to place individuals, communities and their collective rights at the centre of response mechanisms should be avoided.

30. Traditionally, the mental health care and support services provided in many humanitarian settings view individuals as passive recipients of aid,²² while paternalistic and donor-driven humanitarian responses have dominated the global response to emergencies.²³ These top-down approaches highlight the power

¹⁹ See A/HRC/29/33, para. 107.

²⁰ Office of the United Nations High Commissioner for Human Rights (OHCHR), “United Nations experts to United States: ‘Release migrant children from detention and stop using them to deter irregular migration’”, 22 June 2018. Available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23245&LangID=E>; OHCHR, “Thailand: United Nations experts condemn use of defamation laws to silence human rights defender Andy Hall”, 17 May 2018. Available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23095&LangID=E>; OHCHR, “Confronting the two faces of racism: resurgent hate and structural discrimination”, 21 March 2018. Available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22856&LangID=E>.

²¹ Asian Pacific American Institute for Congressional Studies, “APAICS and AAPI coalition express concerns about the xenophobic rhetoric in 2010 campaigns”, 1 November 2010. Available at <http://apaics.org/2010/11/01/apaics-and-aapi-coalition-express-concerns-about-the-xenophobic-rhetoric-in-2010-campaigns/>.

²² Lisa Schwartz and others, “Ethics in humanitarian aid work: learning from the narratives of humanitarian health workers”, *AJOB Primary Research*, vol. 1, No. 3 (2010).

²³ Michael Barnett, “Humanitarianism, paternalism and the UNHCR”, in *Refugees in International Relations*, Alexander Betts and Gil Loescher, eds. (Oxford, Oxford University Press, 2011); Vanessa Pupavac, “Global disaster management and therapeutic governance of communities”, *Development Dialogue*, No. 58 (April 2012).

imbalances of humanitarian settings and should be revised for two important reasons: (a) they devalue the participation of people on the move in their own well-being; and (b) they trap individuals in a confined narrative of psychological trauma or “disorder” that fails to contextualize their complex social, economic and political lives. Top-down, vertical programmes that seek to “treat” mental health conditions as diseases should not dominate. Instead, interventions should be developed that emphasize the participation of people on the move in their own well-being and consider their circumstances as part of a broader sociopolitical ecosystem.

Dominance of the biomedical approach and the pathologization of adversity

31. The use of alarming statistics to indicate the scale and economic burden of “mental disorders” has been a strategic and politically useful device to elevate mental health as a global priority. However, the Special Rapporteur recalls that framing the issue as such firmly roots the global mental health crisis within a biomedical model, involving neurobiological factors and processes as the dominant explanation and response to poor mental health. Currently, the majority of investments relating to mental health in low-, middle- and high-income countries are disproportionately geared towards funding services based on the biomedical model of psychiatry — inpatient treatment, medications and institutional care.²⁴ With this, the focus is less on policy, empowerment and investing in enabling conditions, and more on treating individual conditions, leading to ineffective and potentially harmful outcomes. Importantly, this makes policymakers give less of a priority to addressing the main risk and protective factors affecting mental health for everyone, including in the context of migration.

32. Similarly, over the past two decades, the mental health needs of people on the move have gained significant visibility thanks to the strategic use of the term “trauma” to characterize the suffering and adversity that those subjected to forced displacement in the migration process face.²⁵ The discourse from a trauma perspective has highlighted the previously invisible factors of distress, including the structural violence of conflict, loss of home and the stultifying nature of forcible displacement. However, the discourse has also translated into a trauma-related clinical practice in the form of individualized psychosocial counselling and medication. This in turn has obscured the main protection risks and the factors essential for positive well-being, and ignored the social and political meaning that the collective experience of displacement represents for many.²⁶ The vast majority of people on the move experience normal emotional reactions to often extraordinary external stressors and suffering. To view those responses within the medical framework of “trauma”, “disorder” or “illness” traps individuals in a narrative that limits the richness and possibility of their human story. It is concerning how that framework can lead to paternalism, thereby undervaluing and undermining the inherent power and agency of individuals as active participants in their mental health and empowered rights holders, as opposed to passive recipients of care. While a small number of people on the move do experience significant mental health challenges and require individualized care and support, the excessive pathologization of the effects of human mobility should be avoided.

33. The insufficient quality of health-care professionals can be a significant obstacle owing to the reductive skills and bias many bring to mental health settings. The

²⁴ See A/HRC/35/21, paras. 18–29; see also Human Rights Council resolution 36/13, para. 9.

²⁵ Didier Fassin and Richard Rechtman, *The Empire of Trauma: An Inquiry into the Condition of Victimhood* (Princeton, Princeton University Press, 2009); Miranda Alcock, “Refugee trauma: the assault on meaning”, *Psychodynamic Practice*, vol. 9, No. 3 (2003).

²⁶ Rita Giacaman and others, “Mental health, social distress and political oppression: the case of the occupied Palestinian territory”, *Global Public Health*, vol. 6, No. 5 (July 2011).

paternalism inherent within the biomedical model and trauma frameworks remains a legacy of mental health training and influences how care is developed and delivered. Key stakeholders, despite their best intentions to provide care to people on the move, have a tendency to overpathologize the experience of human mobility and underemphasize the significance of the social, political, cultural, spiritual and economic determinants of mental health and well-being.²⁷ It is therefore necessary to consider ways to overcome those obstacles in the training and diversification of such professionals.

IV. Right to mental health framework and people on the move

A. Obligations

34. The International Covenant on Economic, Social and Cultural Rights provides a legally binding framework for the right to the enjoyment of the highest attainable standard of physical and mental health. This is complemented by a range of legal instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, the Convention Relating to the Status of Refugees and the Convention on the Rights of the Child. States parties have an obligation to respect, protect and fulfil the right to physical and mental health in national laws, policies, budgetary measures, programmes and other initiatives.

35. The right to physical and mental health includes the immediate obligations and requirements of States to take deliberate, concrete and targeted actions in order to realize that right progressively.²⁸ However, certain core obligations are not subject to progressive realization and must be implemented immediately. They include the elaboration of a national public health strategy and non-discriminatory access to services. Regarding the right to mental health, this means: (a) the development of a national mental health strategy that includes people on the move; (b) a concrete plan to develop a coordination mechanism to address the health and well-being of people on the move, including the people themselves as well as humanitarian actors and communities; and (c) a road map leading away from coercive treatment and towards equal access to rights-based mental health services, including the equitable distribution of services in the community.

36. The prohibition of discrimination, including on the grounds of national origin, birth or legal status, is also a core obligation that is not subject to progressive realization.²⁹ States are obliged to respect, protect and fulfil the right to mental health of all people on their territory or under their effective control, regardless of their

²⁷ Vanessa Pupavac, "Therapeutising refugees, pathologising populations: international psycho-social programmes in Kosovo", New Issues In Refugee Research, Working Paper No. 59. Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/77E8853E90165CCDC1256C610035083E-hcr-therapeutising-aug02.pdf>; D. Bhugra and others, "EPA guidance mental health care and migrants", *European Psychiatry*, vol. 29, No. 2 (February 2014); Milica Pejovic-Milovancevic, Henrikje Klasen and Dimitris Anagnostopoulos, "ESCAP for mental health of child and adolescent refugees: facing the challenge together, reducing risk, and promoting healthy development", *European Child and Adolescent Psychiatry*, vol. 27, No. 2 (February 2018).

²⁸ International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

²⁹ Ibid., art. 2 (2), and Committee on Economic, Social and Cultural Rights general comments No. 14 (2000) on the right to the highest attainable standard of health, para. 43 (a), and No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 30.

migrant, refugee or other legal status. The very presence of people on the move within a State's jurisdiction — whether in a regular or irregular status — imposes obligations on that State regarding the right to health.

37. People on the move should not be denied the right to migrate by countries of origin, transit or destination on the basis of either their health — including mental health—or disability status. Refusing a person on the move a residence permit, family reunification or naturalization solely on the basis of his or her health — including mental health and disability status — amounts to unlawful discrimination.³⁰

B. International cooperation and assistance

38. International human rights treaties recognize the obligation of States to cooperate to ensure the right to physical and mental health, a responsibility reiterated in the 2030 Agenda for Sustainable Development and echoed in discussions for the global compacts on refugees and migrants. Higher-income States have a particular duty to provide assistance to ensure the right to physical and mental health in lower-income countries. There is an immediate obligation to refrain from providing development cooperation that supports mental health-care systems that are discriminatory or where violence, torture and other human rights violations occur, including within humanitarian or emergency settings. Rights-based development cooperation should support balanced mental health promotion alongside psychosocial interventions and other treatment alternatives, delivered in the community. Far too often, international humanitarian assistance — particularly for mental health — is delivered as short-term, “emergency” support. This forces care to be delivered as reactive and individualistic programme models, often measured by biomedical indicators such as numbers of people treated. In fact, long-term investment is required in order to strengthen mental health systems and ensure they respond to and address the full range of social, economic, psychological and biological factors that produce poor mental health for people on the move and the broader communities in which they live. Many States have recognized the need to introduce a shift in governance mechanisms to support that long-term vision for sustainable and rights-based development, and to merge their international humanitarian and development mechanisms. More States should consider the barriers their governance mechanisms pose to sustainable, rights-based international cooperation.

39. Exclusion and toxic community relations are a central barrier to the realization of the right to mental health in the context of migration. Likewise, exclusion leads to significant economic costs to communities. International assistance must continue to move beyond individualistic treatment paradigms towards more holistic models of collective healing for communities, with a focus on the key determinants of mental health, including healthy community relationships and inclusion. Participatory frameworks should be explored to identify and implement appropriate local models.

40. Despite rhetorical shifts in recent years, mental health globally remains severely underfunded. Between 2007 and 2013, only 1 per cent of international health aid went to mental health.³¹ This illustrates the broad lack of prioritization for mental health as a global issue. This is mirrored in humanitarian settings, where similar constraints have been noted and the unmet need for rights-based mental health care and support interventions have been documented.³² Resource constraints represent a considerable

³⁰ Article 5 of the Convention on the Rights of Persons with Disabilities recognizes that all persons are entitled without discrimination to the equal protection and equal benefit of the law.

³¹ See A/HRC/35/21, para. 39.

³² Wietse Tol, “Mental health and psychosocial support in humanitarian settings: linking practice and research”, *Lancet*, vol. 378, No. 9802 (October 2011).

barrier to the realization of the right to mental health in humanitarian settings. Funding for mental health should always support interventions that are rights-affirming and should never support interventions that lead to human rights violations. The Special Rapporteur highlights the fact that the right to mental health for people on the move cannot be realized without adequate funding, and urges a new generation of international donor champions to take on that challenge.

41. International assistance and cooperation also includes technical support for rights-based mental health policies and practices in the context of migration. The WHO QualityRights initiative is a commendable example of such technical assistance and has been implemented successfully to address mental health and migration in several countries, including Lebanon, which is host to a very high number of people on the move and where the integration of mental health and migration policies and services is exemplary.

42. Likewise, the Inter-Agency Standing Committee task force on mental health has developed a set of guidelines for the coordination of mental health care and support services in emergency settings. Key features of the guidelines include an emphasis on human rights, equality and the participation of individuals and communities in all decisions regarding their own mental health and well-being.³³ However, awareness of the guidelines remains suboptimal, and the quality of psychosocial supports has been questioned.³⁴ The expertise and experience of the task force should be used to develop best practices, strengthen more inclusive collaboration and support knowledge-sharing, while ensuring the participation of affected communities and a rights-based approach to mental health.

C. Participation and access to information

43. Participation is not only a human right but has also been shown to be a determinant for psychological well-being.³⁵ WHO considers the ability of an individual to make a contribution to his or her community as a component of mental health.³⁶ The effective realization of the right to mental health requires that everyone be involved in decisions relating to their own well-being. It is therefore incumbent upon host environments to facilitate the participation of people on the move through legal and policy means as well as efforts aimed at social integration.

44. People on the move have the right to participate in their own care and support as decision-makers and as co-creators of support regimes. Restrictions on their ability to work, obtain an education or otherwise participate meaningfully and equally in their host communities are incompatible with the right to health and should be eliminated.

45. There are numerous ways in which participation can and should be facilitated in the context of human mobility. Participation in policy development could include the use of participatory methods to develop an understanding of the local context in which mental health care and support services are to be delivered, as well as the needs

³³ Inter-Agency Standing Committee, *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings* (Geneva, 2007).

³⁴ Inter-Agency Standing Committee, *Review of the Implementation of the IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings* (2014).

³⁵ I. Kawachi and L. Berkman, "Social ties and mental health", *Journal of Urban Health*, vol. 78, No. 3 (September 2001).

³⁶ WHO and Calouste Gulbenkian Foundation, *Social Determinants of Mental Health* (Geneva, WHO, 2014).

of affected individuals and communities. This model has proved useful in the past.³⁷ People on the move have participated in initiatives to improve mental health and well-being as cultural mediators, peer supporters, community interpreters and health-care workers. These approaches have been shown to enhance the efficacy of interventions and to promote rights as well as the improved quality of care and support.³⁸

46. Timely and accurate information on the right to mental health and mental health care and support services should be made available to people on the move at all stages of their journey, along migratory routes, at reception points and in communities where they live and work. It should be provided in a language and format that they can understand and should state clearly that they are entitled to care and support services on an equal basis with others.

D. Accountability

47. Monitoring the right to mental health of people on the move means monitoring not only the efficacy of mental health care and support services, but also the human rights impact of policies, including immigration policies, on mental health and well-being. States are therefore urged to engage in regular and impartial monitoring of all policies and services that may play a role in the mental health and well-being of people on the move.

48. The role of national human rights institutions, United Nations human rights mechanisms and civil society in the accountability process is especially important. Similarly, human rights monitoring of responses to emergencies should be a key feature of all humanitarian responses. Humanitarian organizations and international donors have a responsibility to uphold the highest standards of transparency to support the accountability process.

E. Social determinants of mental health in the context of migration

49. A rights-based approach to mental health recognizes that the broader social environment in which a person — including a person on the move — finds himself or herself is a determinant of mental health. Consequently, the increasing levels of marginalization and prevailing negative attitudes towards people on the move in many contexts are a cause of concern. Societal-level concerns that have shown to have a relationship with mental health include the need for safety, including safety in the context of intimate relationships;³⁹ the need for meaningful human relationships;⁴⁰ and the need for education and work opportunities and for an adequate standard of living.⁴¹

50. Addressing societal and community-level concerns can improve the mental health and well-being of all people, including people on the move, and can contribute

³⁷ Susan McKay and others, "Building meaningful participation in (re)integration among war-affected young mothers in Liberia, Sierra Leone and northern Uganda", *Intervention*, vol. 9, No. 2 (July 2011).

³⁸ Barbara Kieft and others, "Paraprofessional counselling within asylum seekers' groups in the Netherlands: transferring an approach for a non-western context to a European setting", *Transcultural Psychiatry*, vol. 45, No. 1 (2008); Constanze Quosh, "Takamol: multi-professional capacity building in order to strengthen the psychosocial and mental health sector in response to refugee crises in Syria", *Intervention*, vol. 9, No. 3 (2011).

³⁹ Ann Coker and others, "Social support protects against the negative effects of partner violence on mental health", *Journal of Women's Health and Gender-Based Medicine*, vol. 11, No. 5

⁴⁰ Kawachi and Berkman, "Social ties and mental health".

⁴¹ WHO and Calouste Gulbenkian Foundation, "Social determinants of mental health".

significantly to the realization of the right to mental health for all. The Special Rapporteur reiterates that the mental health of all people in any society can benefit significantly from laws, policies and social interventions that foster enabling environments for everybody to develop fulfilling relationships and to contribute meaningfully to the community.⁴²

F. Care and support

51. While it is necessary to ensure that those who do experience mental health challenges are provided with adequate care and support, it is vital to recognize that most people on the move experience normal responses to adversity that should not be pathologized as individual conditions. Hence, the mental health implications of the experiences of people on the move are part of a spectrum, and the relevant interventions and policies should therefore include approaches that are equally diverse. The availability, acceptability, accessibility and quality framework⁴³ should be applied to mental health care and support interventions that cater to all segments of that spectrum.

Availability

52. Availability requires States to put in place individual screening and assessment procedures to assess an individual's mental health and well-being as well as the human rights situation of people on the move.⁴⁴ Through those mechanisms, it should be possible to identify survivors of sexual and gender-based violence and torture as well as other people on the move with mental health and well-being needs, and to ensure they are referred to the appropriate health and protection services.

53. Mental health care and support services should not only be available for people on the move but should also be appropriate and not infringe on the rights of those affected. Overuse of biomedical interventions or overemphasis on psychological trauma should be eschewed for interventions that emphasize the right of people on the move to live freely in their communities and to be given opportunities to thrive. Efforts should be made to ensure that mental health care and support services are rights-based and available to people on the move on an equal basis with nationals, rather than in parallel systems. Globally, harm reduction services remain critically underfunded, and this is compounded for people on the move.⁴⁵

54. Throughout the world, mental health care and support workforce shortages have been a significant impediment to access to services.⁴⁶ Humanitarian settings also face such shortages,⁴⁷ which is a major challenge for the implementation of the Inter-

⁴² See A/HRC/35/21 paras. 67–68.

⁴³ See Committee on Economic, Social and Cultural Rights general comments No. 14, para. 12.

⁴⁴ See, for example WHO and UNHCR, *Assessing mental health and psychosocial needs and resources: toolkit for humanitarian settings* (Geneva, WHO, 2012).

⁴⁵ European Monitoring Centre for Drugs and Drug Addiction, "Migrants, asylum seekers and refugees: an overview of the literature relating to drug use and access to services — background paper: a European guide" (2017). Available at http://www.emcdda.europa.eu/system/files/attachments/6341/EuropeanResponsesGuide2017_BackgroundPaper-Migrants-Asylum-seekers-Refugees-Drug-use.pdf.

⁴⁶ WHO, *Mental Health Atlas* (Geneva, 2018).

⁴⁷ International Medical Corps, "Mental health and psychosocial support considerations for Syrian refugees in Turkey: sources of distress, coping mechanisms, and access to support" (Los Angeles, CA and Washington, D.C., 2017).

Agency Standing Committee guidelines.⁴⁸ Community-based care and peer support models are a means to overcome workforce scarcity.⁴⁹

Accessibility

55. In recent years, States have increased the use of restrictive and punitive immigration policies as a means to deter migration.⁵⁰ Such policies have contributed to a risk environment where human rights violations are more likely to and do occur, including at the hands of State officials.⁵¹ The development of immigration policies that focus on inclusion and that cater to life in a community of peers has been shown to be supportive of well-being.⁵² States should work actively towards the development of such laws and policies.

56. The Special Rapporteur on the human rights of migrants and the previous Special Rapporteur on the right to health have noted that the health needs of irregular or undocumented migrants are often systematically and irreversibly left unmet.⁵³ In some countries, people on the move in irregular situations are excluded by law or policies and/or in practice and only permitted to obtain emergency medical care, often at a cost, thus denying them the primary or secondary care they need, including mental health care and support services. Similarly, where social services and health-care workers are obliged — by law, policy or practice — to report irregular migrants to the immigration or other public authorities, people on the move are unable to gain access to services out of fear of being arrested, detained and deported. This constitutes a violation of the right to privacy, as well as an impediment to the realization of the right to health. The use of “firewall” measures that allow people on the move to interact freely with public officials to report violations has been identified as a policy solution to separate immigration enforcement and facilitate access to service provision.⁵⁴

57. Mental health care and support services should be accessible to people on the move with disabilities on an equal basis with others. The physical accessibility of service settings for people on the move with disabilities has been highlighted as a challenge that requires urgent rectification if the right to physical and mental health is to be realized in a manner that does not discriminate.⁵⁵ Similarly, accommodations in mental health care and support services for persons with intellectual, cognitive or psychosocial disabilities should be made available and should recognize that the spectrum of functions and abilities prevalent in all populations also applies to people on the move.

58. To ensure the accessibility of mental health care and support services, geographical, cultural and linguistic barriers should be addressed through capacity-

⁴⁸ Inter-Agency Standing Committee, *Review of the Implementation of the IASC Guidelines*.

⁴⁹ T. Hoeft and others, “Task-sharing approaches to improve mental health care in rural and other low-resource settings: a systematic review”, *The Journal of Rural Health*, vol. 34, No. 1 (December 2018); Carolyn Williams, “The Southeast Asian refugees and community mental health”, *Journal of Community Psychology*, vol. 13 (July 1985).

⁵⁰ International Federation of Red Cross and Red Crescent Societies, “New walled order: how barriers to basic services turn migration into a humanitarian crisis” (2018). Available at <http://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2018/07/180628-Migration-policy-report-A4-EN.pdf>.

⁵¹ *Ibid.* See also A/72/335.

⁵² *Ibid.*

⁵³ A/HRC/17/33 and A/HRC/23/41.

⁵⁴ François Crépeau and Bethany Hastie, “The case for ‘firewall’ protections for irregular migrants: safeguarding fundamental rights”, *European Journal of Migration and Law*, vol. 17 (June 2015).

⁵⁵ Human Rights Watch, “Greece: refugees with disabilities overlooked, underserved”, 18 January 2017. Available at <https://www.hrw.org/news/2017/01/18/greece-refugees-disabilities-overlooked-underserved>.

building, the provision of remote and mobile services, interpreters, outreach activities and language and culturally appropriate care and support that recognizes the specific needs and sensitivities of the people who use them.

Acceptability

59. An acceptable approach to mental health and well-being for people on the move must consider the diversity of backgrounds, which can inform experiences of migration and the post-migration integration process. To be acceptable, mental health care and support services should be sensitive to issues of culture, religion, language and context. Research has demonstrated that people on the move of differing backgrounds experience the mental health effects of migration and displacement in different ways,⁵⁶ and this should be considered through the inclusive participation of communities when interventions are designed and implemented. Biomedical models of care and support that tend to be “exported” to other regions of the world⁵⁷ may not always be suitable to other contexts. The development of local solutions, based on evidence and human rights, is necessary in order to ensure that the services provided are acceptable.

60. In some settings, the phenomenon of “medical xenophobia” has been documented, whereby health-care workers are involved in denying access to services for people on the move.⁵⁸ Discrimination can also have the effect of discouraging people on the move from seeking mental health care and support services when they need them, resulting in further adverse outcomes.⁵⁹ This is indicative of the need for engagement with all workers about the right of all people, including people on the move, to mental health. States should be active in taking steps to ensure that discrimination in mental health care and support settings is eliminated, including through policy measures and training. Human rights education should be incorporated into the training of all workers interacting with people on the move. Important work is being done by medical professional organizations, including the World Medical Association⁶⁰ and the World Psychiatric Association,⁶¹ to confront structural violence and discrimination.⁶² These initiatives are welcomed and encouraged. Orgs also

⁵⁶ M. Terheggen, M. Stroebe and R. Kleber, “Western conceptualizations and eastern experience: a cross-cultural study of traumatic stress reactions among Tibetan refugees in India”, *Journal of Traumatic Stress*, vol. 14, No. 2 (April 2001); Laurence Kirmayer, “Common mental health problems in immigrants and refugees: general approach in primary care”, *Canadian Medical Association Journal*, vol. 183, No. 12 (September 2011).

⁵⁷ Richard Bentall, “Western models for mental health: a cautionary note”, Commonwealth Health Partnerships (2014). Available at <http://www.commonwealthhealth.org/wp-content/uploads/2014/05/5-Western-models-for-mental-health-bentall.pdf>.

⁵⁸ Orateng Lepodise, “Medical xenophobia: public hospitals deny migrants health care services — South African Human Rights Commission”, 29 March 2018. Available at <https://www.dailymaverick.co.za/article/2018-03-29-medical-xenophobia-public-hospitals-deny-migrants-health-care-services-sahrc/#.WxFXCUgvzD6>.

⁵⁹ Ibid.

⁶⁰ World Medical Association, “WMA resolution on refugees and migrants”, Available at www.wma.net/policies-post/wma-resolution-on-refugees-and-migrants/.

⁶¹ World Psychiatric Association, “WPA position statement migrant crisis”, 2016. Available at http://www.wpanet.org/detail.php?section_id=7&content_id=1772.

⁶² See, for example, British Dental Association “X-rays for young asylum seekers: inaccurate, and unethical”, 23 November 2015. Available at <https://www.bda.org/news-centre/latest-news/articles/Pages/Xrays-for-young-asylum-seekers-inaccurate-and-unethical.aspx>; Colleen Kraft, “AAP statement opposing separation of children and parents at the border”, American Academy of Pediatrics, 8 May 2018. Available at <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx>; American College of Physicians, “Immigration position statement”, 30 January 2017. Available at https://www.acponline.org/acp_policy/policies/immigration_position_statement_2017.pdf.

cannot ignore the broader structural forces that produce discriminatory attitudes, as all health-care workers also are people living in communities.⁶³

Quality

61. The quality of mental health care and support services is a necessary condition for the right to mental health to be realized. Mental health care and support services for migrants should include prevention, promotion, treatment, recovery and growth. The excessive use of biomedical interventions, including the inappropriate use or overprescription of psychotropic medications and the use of coercion and forced admissions, compromise the right to quality care and support. The stressors faced by people on the move need not be pathologized and automatically treated as biomedical "illnesses". Instead, an approach that recognizes the value of all interventions, including non-specialized and mental health-promoting interventions geared towards well-being, is required.

62. Training and capacity-building on mental health models that do not pathologize or medicalize the experience of human mobility or overemphasize biomedical interventions but instead recognize the value of an approach that is rooted in the development of human relationships should be prioritized in the process of strengthening mental health systems. Capacity-building should also consider the need for a human rights-based approach and should be geared towards care that is culturally appropriate and that recognizes the specific social, legal, financial and political circumstances of those on the move.

63. Culturally competent care and support services are an essential fixture in the realization of the right to mental health. This entails ensuring that the specific sociocultural needs of people on the move are met on an equal basis with others making use of a particular service, recognizing specific linguistic, ethnic, religious and other cultural factors. Incorporating people on the move into the framework of support for their peers is one means by which care and support services can be made more culturally appropriate. The training and use of mental health advocates, peer supporters, community outreach volunteers and cultural mediators from refugee, internally displaced or migrant communities have proved useful and should be replicated.⁶⁴

64. Health-care workers possess an ethical duty to care in all instances but are often asked to act as immigration enforcement officials where people on the move are concerned.⁶⁵ States should recognize that this ethical challenge can be a significant impediment to the realization of the right to physical and mental health of people on the move and should take all steps necessary to ensure that health-care workers, whose primary obligation is to provide services to those who require it, are not faced with this obstacle.

⁶³ Seth M. Holmes and Philippe Bourgois, *Fresh Fruit, Broken Bodies: Migrant Farmworkers in the United States* (Berkeley, University of California Press, 2013).

⁶⁴ Mind, *Improving Mental Health Support for Refugee Communities: An Advocacy Approach* (London, 2009). Available at https://www.mind.org.uk/media/192447/Refugee_Report_1.pdf; Kieft and others "Paraprofessional counselling within asylum seekers' groups in the Netherlands" (see footnote 39); Quosh, "Takamol" (see footnote 39); P. Ventevogel, "Capitalization: psychosocial services and training institute in Cairo" (unpublished).

⁶⁵ D. Biswas and others, "Access to health care for undocumented migrants from a human rights perspective: a comparative study of Denmark, Sweden, and the Netherlands", *Health and Human Rights*, vol. 14, No. 2 (December 2012).

V. Issues in focus

65. In keeping with the Special Rapporteur's continued wish to prioritize the healthy development of children and young people, special attention must be paid to the right to mental health of children and families on the move. Similarly, the Special Rapporteur's most recent report on deprivation of liberty highlights the broad impact this has on mental health and raises concerns around the protection of the right to mental health within punitive models of confinement. As immigration detention is a default strategy in many parts of the world for regulating human mobility, the present report examines the issue from the perspective of the right to mental health.

A. Children and families

66. The family system is a key foundation of mental health and well-being, particularly for children and adolescents, and has been a central focus of the historical development of immigration policies and legislation the world over.⁶⁶ This reflects a shared and universal value for family unity regardless of ideological, geographic and cultural differences.⁶⁷ The undermining of family unity in the context of human mobility and its detrimental impact on the mental health and well-being of children and adolescents on the move is a rights violation and presents a challenge whose effects could last for years or even generations to come.

67. As highlighted by the Special Rapporteur in his previous reports, key supportive factors that can aid in the realization of the right to mental health include a stable family environment and participation in a community that includes strong peer relationships.⁶⁸ Environments where children and adolescents are able to flourish, that cater to their needs for safety and non-violence,⁶⁹ that allow for healthy relationships to form⁷⁰ and that ensure access to quality education⁷¹ can significantly enhance the mental health and well-being of all children and young people. States should take all steps necessary to ensure that those environments are available for all children and adolescents, including those on the move.

68. The Special Rapporteur has highlighted States' obligation to provide quality, acceptable, accessible and available mental health care and support services for all children and adolescents. He has also noted that, despite those obligations, there is a worrying lack of recognition of the nature and scale of mental health and well-being needs of young people.⁷² Globally, there is an undercapacity of child and adolescent mental health care and support services,⁷³ and the overuse of institutional care and biomedical interventions that is evident in mental health-care systems is also evident in the realm of child and adolescent mental health care and support.⁷⁴ All children and

⁶⁶ Stephen Legomsky, "Immigration, equality and diversity", *Columbia Journal of Transnational Law*, vol. 31, No. 2 (1993).

⁶⁷ M. Hirschfield and D. Wikler, "An Ethics Perspective on Family Caregiving Worldwide: Justice and Society's Obligations", in *Generations*, No. 4, Vol. 27.

⁶⁸ A/HRC/29/33, A/HRC/32/32 and A/HRC/35/21.

⁶⁹ Mina Fazel and others, "Mental health of displaced and refugee children resettled in high-income countries: risk and protective factors", *The Lancet*, vol. 379, No. 9812 (January 2012).

⁷⁰ Bonnie Benard, *Fostering Resiliency in Kids: Protective Factors in the Family, School, and Community* (Washington D.C., Department of Education, 1991).

⁷¹ M. Atkins and others, "Toward the integration of education and mental health in schools", *Administration and Policy in Mental Health and Mental Health Services Research*, vol. 37, Nos. 1–2 (March 2010).

⁷² See A/HRC/32/32, para. 71.

⁷³ Panos Vostanis, "Global child mental health: emerging challenges and opportunities", *Child and Adolescent Mental Health*, vol. 22, No. 4 (2017).

⁷⁴ See A/HRC/32/32, para. 15.

adolescents, including children and adolescents on the move, possess an inalienable right to mental health that States must take active steps to realize, including through the expansion of care and support services that adhere to a rights-based approach and that recognize the social, cultural, economic, legal and political determinants of mental health and well-being.

69. The Convention on the Rights of the Child establishes the paramount principle of the best interests of the child for all matters concerning them. This standard applies to all children and adolescents on the move. Despite this, violations of the rights of children on the move to education,⁷⁵ social protection,⁷⁶ health,⁷⁷ safety and security,⁷⁸ access to justice,⁷⁹ freedom from torture, cruel, inhuman and degrading treatment⁸⁰ and non-discrimination⁸¹ have been documented and all of these can have significant implications for their mental health and well-being. The Special Rapporteur calls upon States to harmonize with the Convention all official laws, policies and protocols regarding migration and displacement without delay.

70. Efforts aimed at family reunification can have significant positive implications for the mental health of children and adolescents on the move. However, the deliberate obfuscation of policies supporting family reunification has been documented. This contravenes the best interests of the child, violates the rights of the child to family unity and to physical and mental health and compromises not only the full and harmonious development of children, but also their mental well-being and potential for psychological and cognitive growth. Laws and policies that institutionalize the separation of children on the move from their families contribute significantly to adverse mental health outcomes and should be repealed without delay.

71. Children and adolescents in an irregular migration situation may also be at risk of adverse mental health outcomes. States should be mindful of the considerable psychological difficulties visited upon children and adolescents who either are themselves facing deportation or have family members who may be facing deportation.⁸² The standard of the best interests of the child should be the paramount consideration when such decisions are contemplated, including in policy and legislation.

72. Early childhood interventions, including early childhood development programming, should be made available to children on the move on an equal basis with all other children. The importance of early childhood development programming

⁷⁵ United Nations Children's Fund (UNICEF), "Refugee and migrant children stuck in Greece face double crisis", press release, 26 August 2016. Available at https://www.unicef.org/media/media_92675.html.

⁷⁶ Ibid.

⁷⁷ Human Rights Watch, "Jordan: step forward, step back for urban refugees: they get legal status, but lose health subsidies", 29 March 2018 (updated). Available at <https://www.hrw.org/news/2018/03/25/jordan-step-forward-step-back-urban-refugees>; Erica Moretti, "How to help Syria's refugee children", *Washington Post*, 8 March 2018. Available at https://www.washingtonpost.com/news/made-by-history/wp/2018/03/08/how-to-help-syrias-refugee-children/?utm_term=.0e0b84fedb88.

⁷⁸ Atika Shubert, Bharati Naik and Bryony Jones, "Refugee life, as seen by children fleeing war", CNN, 20 June 2016. Available at <https://www.cnn.com/2016/06/20/europe/child-refugees-greece/index.html>.

⁷⁹ European Council on Refugees and Exiles, "Right to justice: quality legal assistance for unaccompanied children — comparative report" (2014).

⁸⁰ Harriet Grant, "Home Office faces court action over asylum children", *The Guardian*, 24 April 2018.

⁸¹ Zeynep Doğusan, "Refugee children discriminated against in Germany, UNICEF says", *Daily Sabah Europe*, 10 September 2014.

⁸² Medical Express, "Ending DACA could have dire public health consequences", 15 September 2017. Available at <https://medicalxpress.com/news/2017-09-daca-dire-health-consequences.html>.

should not be underestimated, given the high potential for adaptability of infants and toddlers and the capacity for recovery from acute stressors when the necessary support is provided. Likewise, enabling a safe and supportive school environment is an utmost precondition for positive mental health. Too often, children are isolated, bullied or punished on the basis of their migration status.

B. Detention

73. In his report on deprivation of liberty and the right to health, the Special Rapporteur notes that immigration detention is becoming increasingly common and has severe implications for the mental health and well-being of people on the move.⁸³ In numerous cases, immigration detention occurs without due process.

74. Research has demonstrated that the detention of people on the move in inhumane conditions can have adverse mental health implications.⁸⁴ Immigration detention may also exacerbate existing mental health challenges. The mental health challenges visited upon people on the move during the process of detention also persist after detention and can have adverse effects on their quality of life.⁸⁵ Data also clearly suggests that detention as a form of deterrence is ineffective.

75. The Working Group on Arbitrary Detention has stated that immigration detention should gradually be abolished.⁸⁶ In echoing that statement, and relevant United Nations guidelines,⁸⁷ the Special Rapporteur recommends that States establish in law a presumption against immigration detention, work progressively to end all forms of immigration detention and prioritize the implementation of non-custodial, community-based alternatives to detention.

76. The arbitrary detention of persons with intellectual, cognitive and psychosocial disabilities also occurs in the context of migration and displacement. The Convention on the Rights of Persons with Disabilities places an absolute ban on deprivation of liberty based on disability. That practice violates the rights to personal liberty and to security⁸⁸ and may amount to a violation of the right to live free from torture and ill-treatment.⁸⁹ It likewise comes into conflict with the right to mental health.

VI. Conclusions and recommendations

77. **The present report provides the opportunity to address, in an integrated manner, two major issues of modern times: the unprecedented movement of people who have been forcibly displaced in the most recent decades and the recent recognition of mental health as a global priority.**

78. **The issues have various common denominators, and the first and most important lesson they present is the need to address and abandon discriminatory policies and practices that are fuelled by negative attitudes and hostile rhetoric against people on the move. The environment of fear and intolerance that results**

⁸³ See A/HRC/38/36, para. 14.

⁸⁴ Katy Robjant, Rita Hassan and Cornelius Katona, "Mental health implications of detaining asylum seekers: systematic review", *British Journal of Psychiatry*, vol. 194, No. 4 (April 2009).

⁸⁵ G. Coffey and others, "The meaning and mental health consequences of long-term immigration detention for people seeking asylum", *Social Science and Medicine*, vol. 70, No. 12 (June 2010).

⁸⁶ See A/HRC/13/30, para. 58.

⁸⁷ OHCHR, "Recommended principles and guidelines on human rights and international borders" (Geneva). Available at https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

⁸⁸ See Human Rights Committee general comment No. 35 on liberty and security of person, para. 3.

⁸⁹ See A/63/175, paras. 47 and 65.

from these attitudes and discourse not only harms the mental health and well-being of people on the move, but also threatens the development of enabling environments and may be therefore detrimental to the mental health and well-being of the general public. This includes children and adults in host societies, including the health-care workers who live there and may end up reproducing discriminatory practices.

79. The xenophobic actions and words of people in positions of political power have a negative impact on the right to mental health. They help to create hostile emotional and psychosocial environments and erode the quality of human relationships, bringing mistrust, disrespect and intolerance into societal life.

80. The ultimate and crucial goal of States and stakeholders should be to stop these trends and develop strong communities characterized by good-quality human relations. Specific measures have little impact if enabling environments are not created and supported for the realization of everybody's rights, including the rights of people on the move and the right to health of all.

81. As we mark the seventieth anniversary of the adoption of the Universal Declaration of Human Rights, States and stakeholders are reminded that violations of the right to mental health can come from words and actions, notably those of State officials. Xenophobic rhetoric and actions must be halted.

82. The good practices that have been identified in the report could be replicated. The Special Rapporteur expresses his appreciation to those States, civil society actors, health-care workers and all stakeholders who have striven to protect and promote the rights of people on the move and to realize their right to mental health.

83. In order to address comprehensively the issues of the report, the Special Rapporteur recommends that States:

(a) Take immediate steps to repeal laws and policies that criminalize irregular migration or that, based on immigration status, impede the ability of people on the move to participate in or develop meaningful relationships in their host communities, work, obtain an education or have access to services, including mental health care and support;

(b) Prohibit immediately and eliminate without delay the detention of children and other practices that are not in their best interests, including the detention of families, family separation and obfuscation of family reunification;

(c) Prohibit immediately the immigration detention of migrants with psychosocial, cognitive or intellectual disabilities and ensure that decisions relating to the entry, stay, naturalization and expulsion of people on the move cannot be made solely on the basis of health status, including mental health status;

(d) Work progressively to end all forms of immigration detention and, in the exceptional circumstances where this is used, ensure that procedural safeguards are implemented fully and that immigration detention is monitored by independent mechanisms to prevent torture, ill-treatment and violence and to prevent related interferences with the realization of the right to physical and mental health;

(e) Ensure that detained migrants are held in conditions that satisfy health standards and have access to essential health-care services, including mental health care and support services;

(f) Establish binding and effective firewalls between service providers and immigration enforcement authorities, ensuring that no enforcement operations are carried out in or near mental health-care or support facilities;

(g) Develop direct, rights-based mental health care and support services for people on the move. These should address their needs for safety, for community participation and for livelihoods; acknowledge that the social, cultural, economic, political and legal determinants of mental health and well-being should inform interventions; cater to the cultural, religious and linguistic needs of users; and be suitable to their context;

(h) Establish individual screening and assessment procedures for people on the move, to identify survivors of sexual and gender-based violence and torture, people with intellectual, cognitive and psychosocial disabilities and other people on the move with mental health and well-being needs;

(i) Ensure the sustainability and non-discrimination of mental health care and support interventions for all people, including people on the move, through effective referrals of people on the move to appropriate services and through the broad incorporation of their needs into existing mental health systems;

(j) Include human rights education, including on the right to mental health and the rights of people on the move, in the training of all front-line workers interacting with them, including all health-care workers;

(k) Ensure that specialized health-care professionals work alongside community-based health-care workers, social service professionals and peer supporters on matters concerning the mental health care of and support for all people, including people on the move;

(l) Foster cooperation between humanitarian and development actors in the field of mental health and refrain from developing parallel health-care systems;

(m) Take steps to reverse the reliance on institutionalization, overmedicalization or other forms of rights-violating mental health interventions;

(n) Prioritize funding for mental health in national budgets;

(o) Introduce appropriate accountability mechanisms, including the monitoring of mental health care and support services and detention settings, to ensure that people on the move have access to redress where necessary.

84. The Special Rapporteur calls upon all stakeholders, including civil society organizations, health-care workers, academia, the international community and donors, who engage with the political, humanitarian and public health responses to people on the move:

(a) To prioritize funding for mental health in the realm of international development and humanitarian assistance;

(b) To increase resources, training and capacity-building in the field of mental health and support services for all persons, including people on the move;

(c) To foster inclusive societies that recognize human diversity and the contribution of all people to the communities where they live;

(d) To move towards more holistic models of collective healing for communities, with a focus on the key determinants of mental health, including healthy community relationships and inclusion;

(e) To work towards community-based mental health care and support services staffed by a combination of providers, focusing on various aspects of well-being, including psychological, social, medical, legal, economic and spiritual well-being;

(f) To engage with mental health care and support staff and front-line workers who interact with people on the move to raise awareness of their right to mental health and address the challenge of discrimination in service settings.
